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PREFACE

These annual cumulative pocket parts update the District of Columbia Official Code, 2001 Edition, with permanent, temporary, and emergency legislation and judicial constructions contained in annotations. These pocket parts contain the Laws, general and permanent in their nature, relating to or in force in the District of Columbia (except such laws as are of application in the General and Permanent Laws of the United States) in effect as of April 1, 2014.

This Supplement also updates the D.C. Code annotations by including notes taken from District of Columbia cases appearing in the following sources: Atlantic Reporter, 3d Series Supreme Court Reporter Federal Reporter, 3d Series Federal Supplement, 2d Series Bankruptcy Reporter.

Current legislation between pamphlets or pocket parts can be accessed online at www.lexisnexis.com/advance, www.lexisnexis.com/research, and http://dcclims1.dccouncil.us/lims.

The unannotated District of Columbia Official Code can be accessed on the District of Columbia Council Website at http://www.dccouncil.us.

Later laws and annotations will be cumulated in subsequent annual Pocket Parts.

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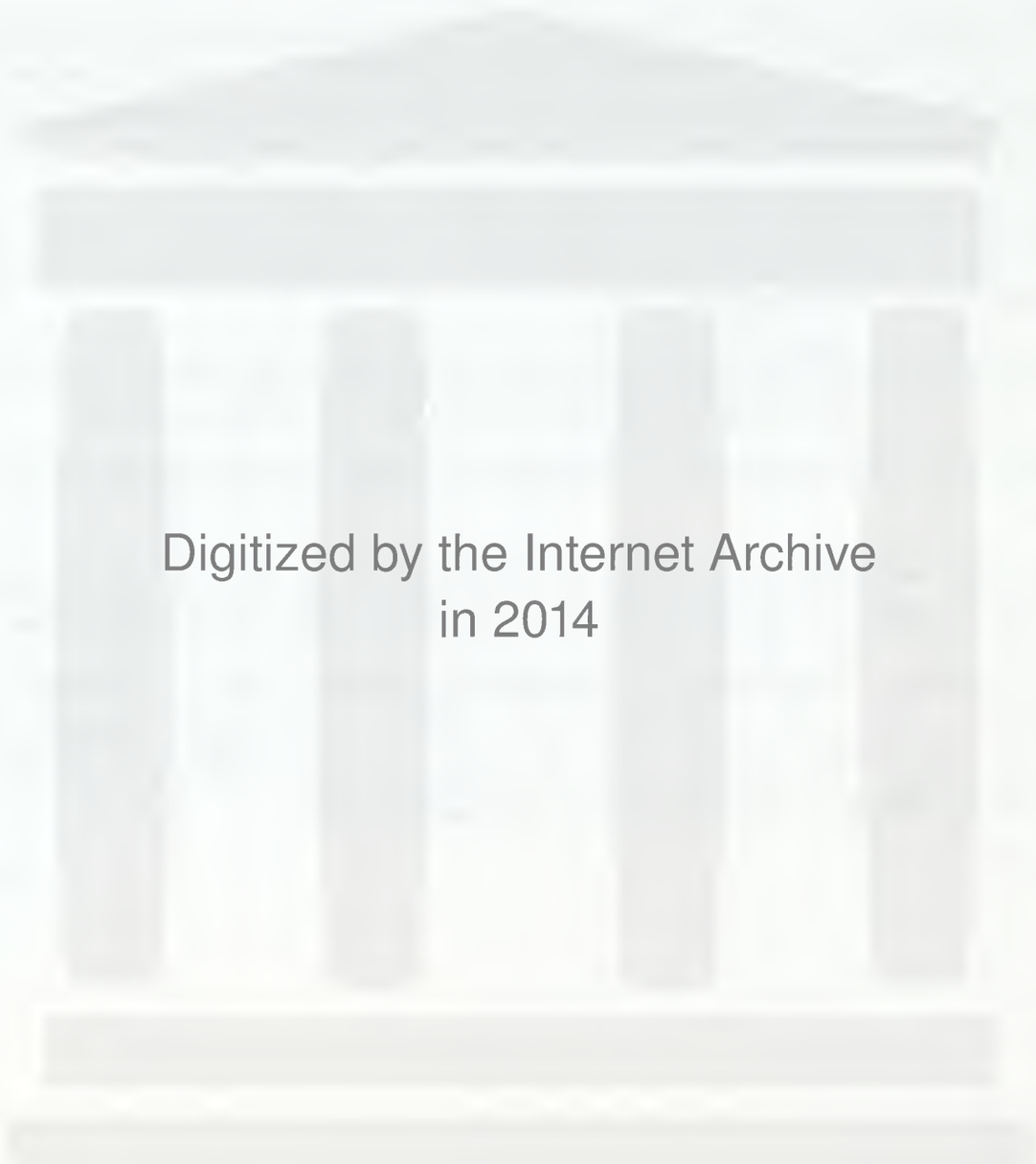

DIVISION II. JUDICIARY AND JUDICIAL PROCEDURE.

TITLE 16. PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS.

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8. Criminal Record Sealing.
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Chapter 3. Adoption.

Sec.
16-301. Jurisdiction; rules.

§ 16-301. Jurisdiction; rules.

(a) Subject to subsection (b) of this section, the Superior Court of the District of Columbia has jurisdiction to hear and determine petitions and decrees of adoption of any adult or child with authority to make such rules, not inconsistent with this chapter, as shall bring fully before the court for consideration the interests of the prospective adoptee, the natural parents, the petitioner, and any other properly interested party.

(b) Jurisdiction shall be conferred when any of the following circumstances exist:

(1) petitioner is a legal resident of the District of Columbia;

(2) petitioner has actually resided in the District for at least one year next preceding the filing of the petition;

(3) the child to be adopted is in the legal care, custody, or control of the Mayor or a child-placing agency licensed under the laws of the District; or

(4) the child to be adopted was born in the District of Columbia.

(c) The jurisdiction conferred upon the Superior Court of the District of Columbia by subsection (b)(4) of this section shall apply retroactively to all children born in the District of Columbia on or after July 18, 2009.

(Dec. 23, 1963, 77 Stat. 537, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 555,

Pub. L. 91-358, title I, § 145(a)(1); Apr. 30, 1988, D.C. Law 7-104, § 4(a), 35 DCR 147; Mar. 19, 2013, D.C. Law 19-233, § 2, 59 DCR 14769.)

Section references. — This section is referenced in § 16-4601.02.

Effect of amendments. — The 2013 amendment by D.C. Law 19-233 added (b)(4); added (c); and made related changes.

Legislative history of Law 19-233. — Law 19-233, the "Judicial Declaration of Parentage Amendment Act of 2011," was introduced in Council and assigned Bill No. 19-615. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 2, 2012, respectively. Signed by the Mayor on Nov. 20, 2012, it was assigned Act No. 19-550 and transmitted to Congress for its review. D.C. Law 19-233 became effective on Mar. 19, 2013.

§ 16-304. Consent; exceptions.

Section references. — This section is referenced in § 4-1451.05 and § 16-316.

CASE NOTES

ANALYSIS

Best interests of child, generally.
Evidence, generally.
Withholding of consent.

Best interests of child, generally.

Clear and convincing evidence supported trial court's finding that child's mental and emotional needs would be better served by remaining in foster parent's custody, in proceeding in which court ordered waiver of required consent of unwed, non-custodial father in best interest of child, who was found to be neglected, and granted adoption of child by foster parent with consent of natural mother; expert witnesses testified that child would suffer emotionally if her attachment to foster parent and foster parent's family were broken, and foster parent testified that she would allow some ongoing contact between child and father. In re C.L.O., 41 A.3d 502, 2012 D.C. App. LEXIS 146 (2012).

When a fit, unwed, noncustodial father has seized his opportunity interest, his resulting right to presumptive custody in an adoption proceeding can be overridden only by a showing by clear and convincing evidence that it is in the best interest of the child to be placed with unrelated persons. In re C.L.O., 41 A.3d 502, 2012 D.C. App. LEXIS 146 (2012).

Evidence, generally.

Clear and convincing evidence supported trial judge's finding that child's need for continuity of care and for timely integration into stable and permanent home weighed in favor of adoption, in proceeding in which court ordered waiver of required consent of unwed, non-custodial father in best interest of child, who was found to be neglected, and granted adoption of child by foster parent with consent of natural mother; child had secure and loving relationship with foster parent, foster parent had demonstrated her ability to provide stability and permanence, and removing child from her preadoptive, foster home would cause her to suffer substantial harm. In re C.L.O., 41 A.3d 502, 2012 D.C. App. LEXIS 146 (2012).

Withholding of consent.

Birth father withholding his consent to adoption was contrary to a three-year-old child's best interest because the father had not been significantly involved in the child's life since birth and was unable to provide stability and permanence for the child, the father had significant unmet mental health needs, a gambling addiction, domestic violence issues, a criminal history, and paid little child support, and the child called the step-father "daddy." In re J.C.F., 73 A.3d 1007, 2013 D.C. App. LEXIS 502 (2013).

§ 16-305. Petition for adoption.

Section references. — This section is referenced in § 4-1305.03 and § 16-308.

LAW REVIEWS AND JOURNAL COMMENTARIES

Racial Preference in Adoption: An Equal Protection Challenge. Davidson M. Pattiz, 82 Geo.L.J 2571 (1994).

§ 16-307. Investigation, report, and recommendation.

Section references. — This section is referenced in § 4-342 and § 16-309.

LAW REVIEWS AND JOURNAL COMMENTARIES

Race as a Factor in Interracial Adoptions. 32 Cath.U.L.Rev.1022, (1983).

§ 16-312. Legal effects of adoption.

CASE NOTES

ANALYSIS

In general.
Special immigrant juvenile status.

In general.

The District of Columbia's adoption statutes clearly envision an adoption by a third-party that does not sacrifice the rights of the existing parent. In re C.G.H., 75 A.3d 166, 2013 D.C. App. LEXIS 597 (2013).

Special immigrant juvenile status.

Upon adoption of a child in the District of Columbia, and within the meaning of 8 U.S.C. § 1101(a)(27)(J)(i), a child is legally committed to an adoptive parent, and that parent has been appointed (that is, named as a parent), by the family court by virtue of the adoption decree. In re C.G.H., 75 A.3d 166, 2013 D.C. App. LEXIS 597 (2013).

Under District law, the adoptive parent becomes a natural parent in the eyes of the law and, as such, the adopted child is entrusted to the care of the adoptive parent when the child is officially placed with the person that the court has named as an adoptive or natural parent; within the meaning of the special immigrant juvenile status statute, 8 U.S.C.S. § 1101(a)(27)(J)(i), and the District's adoption statute, D.C. Code § 16-312, an adopted child is legally committed to, or placed under the custody of an individual appointed by a juvenile or family court. In re C.G.H., 75 A.3d 166, 2013 D.C. App. LEXIS 597 (2013).

CHAPTER 5. ATTACHMENT AND GARNISHMENT.

Subchapter III. Attachment and Garnishment of Wages, etc.

§ 16-575. Judgment against employer-garnishee for failure to pay percentages.

LAW REVIEWS AND JOURNAL COMMENTARIES

The Hatch Act Reform Amendments Did Not Create Government Liability for the Failure to Garnish Employee Wages. 66 Geo.Wash.L.Rev. 1059 (1998).

Chapter 7. Criminal Proceedings in the Superior Court.

§ 16-705. Jury trial; trial by court.

CASE NOTES

Analysis

Waiver of jury trial.
—Inquiry by judge, waiver of jury trial.

Waiver of jury trial.

— Inquiry by judge, waiver of jury trial.
Trial court committed plain error in failing to obtain a valid waiver of defendant's jury trial right under D.C. Code § 16-705(a) with respect to a felon-in-possession charge, because it did not obtain a written or oral waiver from defendant before conducting a bench trial on the charge. The trial court's failure to seek an adequate waiver of defendant's right to a jury trial was structural error likely to have an effect on the fairness, integrity or public reputation of the judicial proceedings. Fortune v. United States, 59 A.3d 949, 2013 D.C. App. LEXIS 11 (2013).

Chapter 8. Criminal Record Sealing.

Sec.
16-801. Definitions.
16-803. Sealing of public criminal records in other cases.
16-803.01. Sealing of arrest records of fugitives from justice.
16-804. Motion to seal.
16-806. Availability of sealed records.

§ 16-801. Definitions.

For the purposes of this chapter, the term:

(1) "Clerk" means the Clerk of the Superior Court of the District of Columbia.

(2) "Completion of the sentence" means the person has been unconditionally discharged from incarceration, commitment, probation, parole, or supervised release, whichever is latest.

(3) "Conviction" means the judgment (sentence) on a verdict or a finding of guilty, a plea of guilty or a plea of nolo contendere, or a plea or verdict of not guilty by reason of insanity.

(4) "Court" or "Superior Court" means the Superior Court of the District of Columbia.

(5) "Disqualifying arrest or conviction" means:

(A) A conviction in any jurisdiction after the arrest or conviction for which the motion to seal has been filed;

(B) A pending criminal case in any jurisdiction;

(C) A conviction in the District of Columbia for an ineligible felony or ineligible misdemeanor or a conviction in any jurisdiction for an offense that involved conduct that would constitute an ineligible felony or ineligible misdemeanor if committed in the District of Columbia or prosecuted under the District of Columbia Official Code, or conduct that is substantially similar to that of an ineligible felony or ineligible misdemeanor.

(6) "Eligible felony" means a failure to appear (§ 23-1327);

(7) "Eligible misdemeanor" means any misdemeanor that is not an ineligible misdemeanor.

(8) "Ineligible felony" means any felony other than a failure to appear (§ 16-1327) [§ 23-1327].

(9) "Ineligible misdemeanor" means:

(A) Interpersonal violence as defined in § 16-1001(6)(B), intimate partner violence as defined in § 16-1001(7), and intrafamily violence as defined in § 16-1001(9).

(B) Driving while intoxicated, driving under the influence, and operating while impaired (§ 50-2201.05);

(C) A misdemeanor offense for which sex offender registration is required pursuant to Chapter 40 of Title 22, whether or not the registration period has expired;

(D) Criminal abuse of a vulnerable adult (§ 22-936(a));

(E) Interfering with access to a medical facility (§ 22-1314.02);

(F) Possession of a pistol by a convicted felon (§ 22-4503(a)(2) [see now § 22-4503(a)(1)]);

(G) Failure to report child abuse (§ 4-1321.07);

(H) Refusal or neglect of guardian to provide for child under 14 years of age (§ 22-1102);

(I) Disorderly conduct (peeping tom) (§ 22-1321);

(J) Misdemeanor sexual abuse (§ 22-3006);

(K) Violating the Sex Offender Registration Act (§ 22-4015);

(L) Violating child labor laws (§§ 32-201 through 32-224);

(M) Election/Petition fraud (§ 1-1001.08);

(N) Public assistance fraud (§§ 4-218.01 through 4-218.05);

(O) Trademark counterfeiting (§ 22-902(b)(1));

(P) Attempted trademark counterfeiting (§§ 22-1803, 22-902);

(Q) Fraud in the second degree (§ 22-3222(b)(2));

(R) Attempted fraud (§§ 22-1803, 22-3222);

(S) Credit card fraud (§ 22-3223(d)(2));

(T) Attempted credit card fraud (§ 22-1803, 22-223) [§§ 22-1803, 22-3223];

(U) Misdemeanor insurance fraud (§ 22-3225.03a);

(V) Attempted insurance fraud (§§ 22-1803, 22-3225.02, 22-3225.03);

(W) Telephone fraud (§§ 22-3226.06, 22-3226.10(3));

(X) Attempted telephone fraud (§§ 22-1803, 22-3226.06, 22-3226.10);

(Y) Identity theft, second degree (§§ 22-3227.02, 22-3227.03(b));

(Z) Attempted identify theft (§§ 22-1803, 22-3227.02, 22-3227.03);

(AA) Fraudulent statements or failure to make statements to employee (§ 47-4104);

(BB) Fraudulent withholding information or failure to supply information to employer (§ 47-4105);

(CC) Fraud and false statements (§ 47-4106);

(DD) False statement/dealer certificate (§ 50-1501.04(a)(3));

(EE) False information/registration (§ 50-1501.04(a)(3));

(FF) No school bus driver's license (18 DCMR § 1305.1);

(GG) False statement on Department of Motor Vehicles document (18 DCMR § 1104.1);

(HH) No permit — 2nd or greater offense (§ 50-1401.01(d));

(II) Altered title (18 DCMR § 1104.3);

(JJ) Altered registration (18 DCMR § 1104.4);

(KK) No commercial driver's license (§ 50-405);

(LL) A violation of building and housing code regulations;

(MM) A violation of the Public Utility Commission regulations; and

(NN) Attempt or conspiracy to commit any of the foregoing offenses (§§ 22-1803, 22-1805a).

(10) "Minor offense" means a traffic offense, disorderly conduct, or an offense that is punishable by a fine only, excluding any ineligible misdemeanor.

(11) "Public" means any person, agency, organization, or entity other than:

(A) Any court;

(B) Any federal, state, or local prosecutor;

(C) Any law enforcement agency;

(D) Any licensing agency with respect to an offense that may disqualify a person from obtaining that license;

(E) Any licensed school, day care center, before or after school facility or other educational or child protection agency or facility;

(F) Any government employer or nominating or tenure commission with respect to:

(i) Employment of a judicial or quasi-judicial officer; or

(ii) Employment at a senior-level, executive-grade government position.

(May 5, 2007, D.C. Law 16-307, § 2(b), 54 DCR 868; Mar. 25, 2009, D.C. Law 17-368, § 4(e), 56 DCR 1338; Dec. 10, 2009, D.C. Law 18-88, § 401, 56 DCR 7413; June 15, 2013, D.C. Law 19-319, § 4(a), 60 DCR 2333.)

Section references. — This section is referenced in § 16-803, § 16-803.01, and § 16-806.

Effect of amendments.

The 2013 amendment by D.C. Law 19-319 rewrote (9)(A).

Legislative history of Law 19-319. — Law 19-319, the "Re-entry Facilitation Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-889. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-657 and transmitted to Congress for its review. D.C. Law 19-319 became effective on June 15, 2013.

§ 16-803. Sealing of public criminal records in other cases.

(a)(1) A person arrested for, or charged with, the commission of an eligible misdemeanor pursuant to the District of Columbia Official Code or the District of Columbia Municipal Regulations whose prosecution has been terminated without conviction may file a motion to seal the publicly available records of the arrest and related court proceedings if:

(A) A waiting period of at least 2 years has elapsed since the termination of the case; and

(B) Except as permitted by paragraph (2) of this subsection, the movant does not have a disqualifying arrest or conviction.

(2)(A) If a period of at least 5 years has elapsed since the completion of the movant's sentence for a disqualifying misdemeanor conviction in the District of Columbia or for a conviction in any jurisdiction for an offense that involved conduct that would constitute a disqualifying misdemeanor conviction if committed in the District, the conviction shall not disqualify the movant from filing a motion to seal an arrest and related court proceedings under this subsection for a case that was terminated without conviction before or after the disqualifying misdemeanor conviction, except when the case terminated without a conviction as a result of the successful completion of a deferred sentencing agreement.

(B) If a period of at least 10 years has elapsed since the completion of the movant's sentence for a disqualifying felony conviction in the District of Columbia or for a conviction in any jurisdiction for an offense that involved conduct that would constitute a disqualifying felony conviction if committed in the District, the conviction shall not disqualify the movant from filing a motion to seal an arrest and related court proceedings under this subsection for a case that was terminated without conviction before or after the disqualifying felony conviction, except when the case terminated without conviction as the result of the successful completion of a deferred sentencing agreement.

(b)(1) A person arrested for, or charged with, the commission of any other offense pursuant to the District of Columbia Official Code of the District of Columbia Municipal Regulations whose prosecution has been terminated without conviction may file a motion to seal the publicly available records of the arrest and court proceedings if:

(A) A waiting period of at least 4 years has elapsed since the termination of the case or, if the case was terminated before charging by the prosecution, a waiting period of at least 3 years has elapsed since the termination of the case; and

(B) Except as permitted by paragraph (2) of this subsection, the movant does not have a disqualifying arrest or conviction.

(2)(A) If a period of at least 5 years has elapsed since the completion of the movant's sentence for a disqualifying misdemeanor conviction in the District of Columbia or for a conviction in any jurisdiction for an offense that involved conduct that would constitute a disqualifying misdemeanor conviction if committed in the District, the conviction shall not disqualify the movant from filing a motion to seal an arrest and related court proceedings under this subsection for a case that was terminated without conviction before or after the disqualifying misdemeanor conviction, except when the case terminated without a conviction as a result of the successful completion of a deferred sentencing agreement.

(B) If a period of at least 10 years has elapsed since the completion of the movant's sentence for a disqualifying felony conviction in the District of Columbia or for a conviction in any jurisdiction for an offense that involved conduct that would constitute a disqualifying felony conviction if committed in the District, the conviction shall not disqualify the movant from filing a motion to seal an arrest and related court proceedings under this subsection for a case that was terminated without conviction before or after the disqualifying felony

conviction, except when the case terminated without conviction as the result of the successful completion of a deferred sentencing agreement.

(c) A person who has been convicted of an eligible misdemeanor or an eligible felony pursuant to the District of Columbia Official Code or the District of Columbia Municipal Regulations may file a motion to seal the publicly available records of the arrest, related court proceedings, and conviction if:

(1) A waiting period of at least 8 years has elapsed since the completion of the movant's sentence; and

(2) The movant does not have a disqualifying arrest or conviction.

(c-1) A person convicted of an offense that was decriminalized after the date of the conviction may file a motion to seal the publicly available records of the arrest, related court proceedings, and conviction.

(c-2) A person to whom a District of Columbia arrest has been attributed, who attests under oath that he or she was incorrectly identified or named, may file a motion to seal publicly available records of the arrest if the law enforcement agency did not take fingerprints at the time of the arrest and no other form of reliable identification was presented by the person who was arrested.

(d) The waiting periods in subsections (a), (b), and (c) of this section, before which a motion to seal cannot be filed, must be satisfied with respect to all of the movant's arrests and convictions unless the movant waives in writing the right to seek sealing of an arrest or conviction as to which the prescribed waiting period has not elapsed.

(e) The waiting periods in subsections (a), (b), and (c) of this section may be waived by the prosecutor in writing.

(f) In a motion filed under subsections (a), (b), or (c) of this section, the movant must seek to seal all eligible arrests and convictions in the same proceeding unless the movant waives in writing the right to seek sealing with respect to a particular conviction or arrest.

(g) In determining whether a movant is eligible to file a motion to seal because of a conviction, arrest, or pending charge, minor offenses shall not be considered.

(h)(1) The Superior Court shall grant a motion to seal if it is in the interests of justice to do so. In making this determination, the Court shall weigh:

(A) The interests of the movant in sealing the publicly available records of his or her arrest, related court proceedings, or conviction;

(B) The community's interest in retaining access to those records, including the interest of current or prospective employers in making fully informed hiring or job assignment decisions and the interest in promoting public safety; and

(C) The community's interest in furthering the movant's rehabilitation and enhancing the movant's employability.

(2) In making this determination, the Court may consider:

(A) The nature and circumstances of the offense at issue;

(B) The movant's role in the offense or alleged offense and, in cases terminated without conviction, the weight of the evidence against the person;

(C) The history and characteristics of the movant, including the movant's:

(i) Character;

(ii) Physical and mental condition;

(iii) Employment history;

(iv) Prior and subsequent conduct;

(v) History relating to drug or alcohol abuse or dependence and treatment opportunities;

(vi) Criminal history; and

(vii) Efforts at rehabilitation;

(D) The number of the arrests or convictions that are the subject of the motion;

(E) The time that has elapsed since the arrests or convictions that are the subject of the motion;

(F) Whether the movant has previously obtained sealing or comparable relief under this section or any other provision of law other than by reason of actual innocence; and

(G) Any statement made by the victim of the offense.

(i)(1) In a motion filed under subsection (a), (c-1), or (c-2) of this section, the burden shall be on the prosecutor to establish by a preponderance of the evidence that it is not in the interests of justice to grant relief.

(2) In a motion filed under subsection (b) of this section, the burden shall be on the movant to establish by a preponderance of the evidence that it is in the interests of justice to grant relief.

(3) In a motion filed under subsection (c) of this section, the burden shall be on the movant to establish by clear and convincing evidence that it is in the interests of justice to grant relief.

(j) A motion to seal made pursuant to this section may be dismissed without prejudice to permit the movant to renew the motion after further passage of time. The Court may set a waiting period before a renewed motion can be filed.

(k) A motion to seal made pursuant to this section may be dismissed if it appears that the movant has unreasonably delayed filing the motion and that the government has been prejudiced in its ability to respond to the motion by the delay in its filing, unless the movant shows that the motion is based on grounds which the person could not have raised by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

(l) If the Court grants the motion to seal:

(1)(A) The Court shall order the prosecutor, any law enforcement agency, and any pretrial, corrections, or community supervision agency to remove from their publicly available records all references that identify the movant as having been arrested, prosecuted, or convicted.

(B) The prosecutor's office and agencies shall be entitled to retain any and all records relating to the movant's arrest and conviction in a nonpublic file.

(C) The prosecutor, any law enforcement agency, and any pretrial, corrections, or community supervision agency office shall file a certification with the Court within 90 days that, to the best of its knowledge and belief, all references that identify the movant as having been arrested, prosecuted, or convicted have been removed from its publicly available records.

(2)(A) The Court shall order the Clerk to remove or eliminate all publicly available Court records that identify the movant as having been arrested, prosecuted, or convicted.

(B) The Clerk shall be entitled to retain any and all records relating to the movant's arrest, related court proceedings, or conviction in a nonpublic file.

(3)(A) In a case involving co-defendants in which the Court orders the movant's records sealed, the Court may order that only those records, or portions thereof, relating solely to the movant be redacted.

(B) The Court need not order the redaction of references to the movant that appear in a transcript of court proceedings involving co-defendants.

(4) The Court shall not order the redaction of the movant's name from any published opinion of the trial or appellate courts that refer to the movant.

(5) Unless otherwise ordered by the Court, the Clerk and any other agency shall reply in response to inquiries from the public concerning the existence of records which have been sealed pursuant to this chapter that no records are available.

(m) No person as to whom such relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest, charge, trial, or conviction in response to any inquiry made of him or her for any purpose except that the sealing of records under this provision does not relieve a person of the obligation to disclose the sealed arrest or conviction in response to any direct question asked in connection with jury service or in response to any direct question contained in any questionnaire or application for a position with any person, agency, organization, or entity defined in § 16-801(11).

(May 5, 2007, D.C. Law 16-307, § 2(b), 54 DCR 868; Oct. 22, 2012, D.C. Law 19-183, § 3, 59 DCR 9429; June 15, 2013, D.C. Law 19-319, § 4(b), 60 DCR 2333; Dec. 13, 2013, D.C. Law 20-50, § 4(a), 60 DCR 15151.)

Section references. — This section is referenced in § 16-804 and § 16-806.

Effect of amendments. — The 2012 amendment by D.C. Law 19-183 added (c-1).

The 2013 amendment by D.C. Law 19-319 rewrote (a) and (b); substituted "a waiting period of at least 8 years" for "a waiting period of at least 10 years" in (c)(1); added (c-2); and added "In a motion filed under subsections (a), (b), or (c) of this section" in (f).

The 2013 amendment by D.C. Law 20-50 substituted "subsection (a), (c-1), or (c-2) of this section" for "subsection (a) of this section" in (i)(1).

Temporary legislation. — For temporary (225 days) amendment of this section, see §§ 2(a) and 3 of the Criminal Record Sealing Temporary Act of 2013 (D.C. Law 20-38, Nov. 5, 2013, 60 DCR 12149).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 2(a) of the Criminal Record Sealing Emergency Act of 2013 (D.C. Act 20-99, July 1, 2013, 60 DCR 10009, 20 DCSTAT 1805).

For temporary (90 days) amendment of this section, see § 2(a) of the Criminal Record Sealing Congressional Review Emergency Act of 2013 (D.C. Act 20-168, September 30, 2013, 60 DCR 14734).

Legislative history of Law 19-183. — Law 19-183, the "Criminal Penalty for Unregistered Motorist Repeal Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-552. The Bill was adopted on first and second readings on June 5, 2012, and July 10, 2012, respectively. Signed by the Mayor on July 31, 2012, it was assigned Act No. 19-436 and transmitted to Congress for its review. D.C. Law 19-183 became effective on Oct. 22, 2012.

Legislative history of Law 19-319. — See note to § 16-801.

Legislative history of Law 20-50. — Law 20-50, the "Personal Property Robbery Prevention Amendment Act of 2013," was introduced

in Council and assigned Bill No. 20-143. The Bill was adopted on first and second readings on July 10, 2013, and October 1, 2013, respectively. Signed by the Mayor on October 17, 2013, it was assigned Act No. 20-189 and transmitted to Congress for its review. D.C. Law 20-50 became effective on December 13, 2013.

§ 16-803.01. Sealing of arrest records of fugitives from justice.

(a) A person arrested upon a warrant issued pursuant to § 23-701 or arrested within the District of Columbia as a fugitive from justice without a warrant having been issued may file a motion to seal the record of the District of Columbia arrest and related Superior Court proceedings at any time after the person has appeared before the proper official in the jurisdiction from which he or she was a fugitive.

(b)(1) The Superior Court shall grant a motion to seal if:

(A) The arrest was not made in connection with or did not result in Regulations charges or federal charges in the United States District Court for the District of Columbia against the person;

(B) The person waived an extradition hearing pursuant to § 23-702(f)(1) and was released pursuant to § 23-702(f)(2) or detained pursuant to § 23-702(f)(3); and

(C) The person proves by a preponderance of the evidence that he or she has appeared before the proper official in the jurisdiction from which he or she was a fugitive.

(2)(A) In all other cases under this section, the Superior Court may grant a motion to seal if it is in the interest of justice to do so. In making this determination, the court shall consider:

(i) The interests of the movant in sealing the publicly available records of his or her arrest and related court proceedings;

(ii) The community's interest in retaining access to those records;

(iii) The community's interest in furthering the movant's rehabilitation and enhancing the movant's employability; and

(iv) Any other information it considers relevant.

(B) The burden shall be on the movant to establish by a preponderance of the evidence that it is in the interest of justice to grant relief.

(c) If the Court grants the motion to seal:

(1)(A) The Court shall order the prosecutor and any law enforcement agency to remove from their publicly available records all references that identify the movant as having been arrested.

(B) The prosecutor's office and law enforcement agencies shall be entitled to retain any and all records relating to the movant's arrest in a nonpublic file.

(C) The prosecutor's office and law enforcement agencies shall file a certification with the Court within 90 days that, to the best of its knowledge and belief, all references that identify the movant as having been arrested have been removed from its publicly available records.

(2)(A) The Court shall order the clerk to remove or eliminate all publicly available court records that identify the movant as having been arrested.

(B) The clerk shall be entitled to retain any and all records relating to the movant's arrest, related court proceedings, or conviction in a nonpublic file.

(3) The Court shall not order the redaction of the movant's name from any published opinion of the trial or appellate courts that refer to the movant.

(4) Unless otherwise ordered by the Court, the clerk and any other agency shall reply in response to inquiries from the public concerning the existence of records which have been sealed pursuant to this chapter that no records are available.

(5) No person as to whom relief pursuant to this section has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest as a fugitive from justice in response to any inquiry made of him or her for any purpose.

(6) For purposes of this section, the entities listed in § 16-801(11)(D)-(F) shall be considered public.

(June 15, 2013, D.C. Law 19-319, § 4(c), 60 DCR 2333; Dec. 13, 2013, D.C. Law 20-50, § 4(b), 60 DCR 15151.)

Section references. — This section is referenced in § 16-806.

Effect of amendments. — The 2013 amendment by D.C. Law 20-50 rewrote (b)(2).

Temporary legislation. — For temporary (225 days) amendment of this section, see §§ 2(b) and 3 of the Criminal Record Sealing Temporary Act of 2013 (D.C. Law 20-38, Nov. 5, 2013, 60 DCR 12149).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 2(b) of the Criminal Record Sealing Emergency Act of 2013 (D.C. Act 20-99, July 1, 2013, 60 DCR 10009, 20 DCSTAT 1805).

For temporary (90 days) amendment of this section, see § 2(b) of the Criminal Record Sealing Congressional Review Emergency Act of 2013 (D.C. Act 20-168, September 30, 2013, 60 DCR 14734).

Legislative history of Law 19-319. — See note to § 16-801.

Legislative history of Law 20-50. — See note to § 16-803.

§ 16-804. Motion to seal.

(a) A motion to seal filed with the Court pursuant to this chapter shall state grounds upon which eligibility for sealing is based and facts in support of the person's claim. It shall be accompanied by a statement of points and authorities in support of the motion, and any appropriate exhibits, affidavits, and supporting documents.

(b)(1) A motion pursuant to § 16-803(a), (b), or (c) shall state all of the movant's arrests and convictions and shall:

(A) Seek relief with respect to all the arrests and any conviction eligible for relief; and

(B) For any arrest or conviction as to which the waiting period in § 16-803(a), (b), or (c) has not elapsed, waive in writing the right to seek sealing of the records pertaining to that arrest or conviction.

(2) If the Court determines that the motion does not comply with the requirements of paragraph (1) of this subsection, then the movant shall have 30 days after being notified by the Court of the noncompliance to amend his or her original motion to include all of the movant's District of Columbia Code and Municipal Regulation arrests and convictions and either seek relief with respect to all the eligible arrests and convictions or waive in writing the right

to seek sealing of the records pertaining to any arrests or convictions for which relief is not sought. If the movant fails to amend his original motion within 30 days, then the motion shall be dismissed without prejudice.

(c) A copy of the motion and any amended motion shall be served upon the prosecutor.

(d) The prosecutor shall not be required to respond to the motion unless ordered to do so by the Court pursuant to § 16-805(b).

(e) If the movant files a motion to seal an arrest that is not in the Court database or an arrest and related court proceedings that are not in a publicly available database, the motion to seal and responsive pleadings shall not be available publicly. If the Court grants such a motion, it shall order that the motion and responsive pleadings be sealed to the same extent and in the same manner as the records pertaining to the arrest and related court proceedings. If the Court denies such a motion, the Court, the United States Attorney's Office, the Office of the Attorney General for the District of Columbia, and the law enforcement agency that arrested the movant shall be entitled to retain any and all records relating to the motion in a non-public file.

(May 5, 2007, D.C. Law 16-307, § 2(b), 54 DCR 868; June 15, 2013, D.C. Law 19-319, § 4(d), 60 DCR 2333.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-319 rewrote (b) and (c); and added (e).

Legislative history of Law 19-319. — See note to § 16-801.

§ 16-806. Availability of sealed records.

(a) Records sealed on grounds of actual innocence pursuant to § 16-802 shall be opened only on order of the Court upon a showing of compelling need; except, that upon request, the movant, or the authorized representative of the movant, shall be entitled to a copy of the sealed records to the extent that such records would have been available to the movant before relief under § 16-802 was granted and shall also be entitled to all certifications filed with the Court pursuant to § 16-802(h)(5). A request for access to sealed court records may be made ex parte.

(b) Records retained in a nonpublic file pursuant to §§ 16-803 or 16-803.01 shall be available:

(1) To any court, prosecutor, or law enforcement agency for any lawful purpose, including:

(A) The investigation or prosecution of any offense;

(B) The determination of whether a person is eligible to have an arrest or conviction sealed or expunged;

(C) The determination of conditions of release for a subsequent arrest;

(D) The determination of whether a person has committed a second or subsequent offense for charging or sentencing purposes;

(E) Determining an appropriate sentence if the person is subsequently convicted of another crime; and

(F) Employment decisions.

(2) For use in civil litigation relating to the arrest or conviction;

(3) Upon order of the Court for good cause shown;

(4) Except for records sealed under § 16-803.01, to any person or entity identified in § 16-801(11)(D), (E), or (F), but only to the extent that such records would have been available to such persons or entities before relief under § 16-803 was granted. Such records may be used for any lawful purpose, including:

(A) The determination of whether a person is eligible to be licensed in a particular trade or profession; and

(B) Employment decisions; and

(5) To the movant or the authorized representative of the movant, upon request, but only to the extent that such records would have been available to the movant before relief under § 16-803 or 16-803.01 was granted. The movant, or the authorized representative of the movant, shall also be entitled to all certifications filed with the Court pursuant to § 16-803(l)(1)(C).

(c) Any person, upon making inquiry of the Court concerning the existence of records of arrest, court proceedings, or convictions involving an individual, shall be entitled to rely, for any purpose under the law, upon the clerk's response that no records are available under § 16-802(h)(7) or § 16-803(l)(5) with respect to any issue about that person's knowledge of the individual's record.

(d) Except to the extent permitted by this section, all sealed records shall remain sealed.

(May 5, 2007, D.C. Law 16-307, § 2(b), 54 DCR 868; June 15, 2013, D.C. Law 19-319, § 4(e), 60 DCR 2333.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-319 rewrote (a); substituted "§§ 16-803 or 16-803.01" for "§ 16-803" in the introductory language of (b); added "Except for records sealed under § 16-803.01" at the beginning of (b)(4); rewrote ((b)(5); added (d); and made related changes.

Legislative history of Law 19-319. — See note to § 16-801.

Chapter 8A. Third-Party Custody.

§ 16-831.01. Definitions.

CASE NOTES

De facto parent.

Because the maternal grandmother did not satisfy the requirements of a de facto parent and she did not live in the same household as the children for at least 4 of the 6 months immediately preceding the filing of the complaint for custody, she did not have standing to bring a third party complaint for custody of the children, but the family court did not err in including her in the award of joint legal and physical custody of the children based on the children's best interests. W.H. v. D.W., 78 A.3d 327, 2013 D.C. App. LEXIS 687 (2013).

§ 16-831.02. Action for custody of child by a third party.

CASE NOTES

Standing.

Brother satisfied the standing requirements to file a third-party complaint for custody of the children because he had resided continually in the same house as the two children since their births, and he had primarily assumed the duties and obligations for which a parent was legally responsible. W.H. v. D.W., 78 A.3d 327, 2013 D.C. App. LEXIS 687 (2013).

Brother satisfied constitutional standing requirements to bring his third party complaint for custody of the children because he was threatened with deprivation of his statutory right to assume the duties and obligations for which a parent was legally responsible, which he had already primarily assumed. W.H. v. D.W., 78 A.3d 327, 2013 D.C. App. LEXIS 687 (2013).

Because the maternal grandmother did not satisfy the requirements of a de facto parent and she did not live in the same household as the children for at least 4 of the 6 months immediately preceding the filing of the complaint for custody, she did not have standing to bring a third party complaint for custody of the children, but the family court did not err in including her in the award of joint legal and physical custody of the children based on the children's best interests. W.H. v. D.W., 78 A.3d 327, 2013 D.C. App. LEXIS 687 (2013).

§ 16-831.03. Action for custody of a child by a de facto parent.

CASE NOTES

De facto parent.

Because the maternal grandmother did not satisfy the requirements of a de facto parent and she did not live in the same household as the children for at least 4 of the 6 months immediately preceding the filing of the complaint for custody, she did not have standing to bring a third party complaint for custody of the children, but the family court did not err in including her in the award of joint legal and physical custody of the children based on the children's best interests. W.H. v. D.W., 78 A.3d 327, 2013 D.C. App. LEXIS 687 (2013).

§ 16-831.04. Third-party custody orders.

CASE NOTES

Best interests of child.

Because the maternal grandmother did not satisfy the requirements of a de facto parent and she did not live in the same household as the children for at least 4 of the 6 months immediately preceding the filing of the complaint for custody, she did not have standing to bring a third party complaint for custody of the children, but the family court did not err in including her in the award of joint legal and physical custody of the children based on the children's best interests. W.H. v. D.W., 78 A.3d 327, 2013 D.C. App. LEXIS 687 (2013).

§ 16-831.05. Parental presumption.

CASE NOTES

Parental presumption rebutted.

Brother and the maternal grandmother presented clear and convincing evidence refuting the parental presumption in favor of the father, which safeguards a parent's constitutionally-protected parental right, because the father was unwilling to care for his children; and the father's custody of the children would be detrimental to the emotional well-being of the children as they wanted to continue living with their brother, and they feared the possibility of living with their father. W.H. v. D.W., 78 A.3d 327, 2013 D.C. App. LEXIS 687 (2013).

§ 16-831.07. Findings necessary to rebut the parental presumption by clear and convincing evidence.

CASE NOTES

Parental presumption rebutted.

Brother and the maternal grandmother presented clear and convincing evidence refuting the parental presumption in favor of the father, which safeguards a parent's constitutionally-protected parental right, because the father was unwilling to care for his children; and the father's custody of the children would be detrimental to the emotional well-being of the children as they wanted to continue living with their brother, and they feared the possibility of living with their father. W.H. v. D.W., 78 A.3d 327, 2013 D.C. App. LEXIS 687 (2013).

Chapter 9. Divorce, Annulment, Separation, Support, Etc.

Sec.
16-902. Residency requirements.
16-909. Proof of child's relationship to parents.
16-914. Custody of children.

§ 16-902. Residency requirements.

(a) Except as provided in subsection (b) of this section, no action for divorce or legal separation shall be maintainable unless one of the parties to the marriage has been a bona fide resident of the District of Columbia for at least 6 months next preceding the commencement of the action.

(b)(1) An action for divorce by persons of the same gender, even if neither party to the marriage is a bona fide resident of the District of Columbia at the time the action is commenced, shall be maintainable if the following apply:

(A) The marriage was performed in the District of Columbia; and

(B) Neither party to the marriage resides in a jurisdiction that will maintain an action for divorce.

(2) It shall be a rebuttable presumption that a jurisdiction will not maintain an action for divorce if the jurisdiction does not recognize the marriage.

(3) Any action for divorce as provided by this subsection shall be adjudicated in accordance with the laws of the District of Columbia.

(c) No action for annulment of a marriage performed outside the District of Columbia or for affirmance of any marriage shall be maintainable unless one of the parties is a bona fide resident of the District of Columbia at the time of the commencement of the action.

(d) The residence of the parties to an action for annulment of a marriage performed in the District of Columbia shall not be considered in determining whether the action shall be maintainable.

(e) If a member of the armed forces of the United States resides in the District of Columbia for a continuous period of 6 months during his or her period of military service, he or she shall be deemed to reside in the District of Columbia for purposes of this section only.

(Dec. 23, 1963, Pub. L. 88-241, § 1, 77 Stat. 560; Sept. 29, 1965, 79 Stat. 889,

Pub. L. 89-217, § 1; Apr. 7, 1977, D.C. Law 1-107, title I, § 101, 23 DCR 8737; May 31, 2012, D.C. Law 19-133, § 2, 59 DCR 2395.)

Effect of amendments. — D.C. Law 19-133 rewrote the section, which formerly read:

"No action for divorce or legal separation shall be maintainable unless one of the parties to the marriage has been a bona fide resident of the District of Columbia for at least six months next preceding the commencement of the action. No action for annulment of a marriage performed outside the District of Columbia or for affirmance of any marriage shall be maintainable unless one of the parties is a bona fide resident of the District of Columbia at the time of the commencement of the action. The residence of the parties to an action for annulment of a marriage performed in the District of Columbia shall not be considered in determining whether such action shall be maintainable. If a member of the armed forces of the United States resides in the District of Columbia for a continuous period of six months during his or her period of military service, he or she shall be deemed to reside in the District of Columbia for purposes of this section only."

Legislative history of Law 19-133. — Law 19-133, the "Civil Marriage Dissolution Equality Act of 2012", was introduced in Council and assigned Bill No. 19-526, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 7, 2012, and March 6, 2012, respectively. Signed by the Mayor on March 20, 2012, it was assigned Act No. 19-330 and transmitted to both Houses of Congress for its review. D.C. Law 19-133 became effective on May 31, 2012.

CASE NOTES

Weight and sufficiency of evidence.

Trial court's finding that wife was bona fide resident of District of Columbia for at least six months, as required to maintain an action for divorce, was not clearly erroneous, despite facially incongruent statement in order that husband and wife had moved with children to Sudan with intent to remain there permanently; wife testified that she had been reluctant to move to Sudan and only moved there out of duty to follow her husband, and that her concerns were validated when she arrived in Sudan and immediately returned to her home in District of Columbia, parties' furniture and belongings had remained in their home in District of Columbia, parties maintained checking account in District of Columbia, and husband testified that he took family to Sudan as "trip" or "trial period" to explore possible business opportunity. Abulqasim v. Mahmoud, 2012 WL 3242986 (2012).

§ 16-909. Proof of child's relationship to parents.

(a) A father-child relationship is established by an adjudication of a man's parentage, by operation of subsection (e) of this section, or by an unrebutted presumption under this subsection. There shall be a presumption that a man is the father of a child:

(1) if he and the child's mother are or have been married, or in a domestic partnership, at the time of either conception or birth, or between conception and birth, and the child is born during the marriage or domestic partnership, or within 300 days after the termination of marital cohabitation by reason of death, annulment, divorce, or separation ordered by a court, or within 300 days after the termination of the domestic partnership pursuant to § 32-702(d); or

(2) if, prior to the child's birth, he and the child's mother have attempted to marry, and some form of marriage has been performed in apparent compliance with law, though such attempted marriage is or might be declared void for any reason, and the child is born during such attempted marriage, or within 300 days after the termination of such attempted marital cohabitation by reason of death, annulment, divorce, or separation ordered by a court; or

(3) if, after the child's birth, he and the child's mother marry or attempt to marry, (with the attempt involving some form of marriage ceremony that has

been performed in apparent compliance with law), though such attempted marriage is or might be declared void for any reason, and he has acknowledged the child to be his; or

(4) if the putative father has acknowledged paternity in writing.

(a-1)(1) A mother-child relationship is established by a woman having given birth to a child, by an adjudication of a woman's parentage, by operation of subsection (e) of this section, or by an unrebutted presumption under paragraph (2) of this subsection.

(2) There shall be a presumption that a woman is the mother of a child if she and the child's mother are or have been married, or in a domestic partnership, at the time of either conception or birth, or between conception or birth, and the child is born during the marriage or domestic partnership, or within 300 days after the termination of marital cohabitation by reason of death, annulment, divorce, or separation ordered by a court, or within 300 days after the termination of the domestic partnership pursuant to § 32-702(d).

(b)(1) A presumption created by subsection (a)(1) through (4) of this section may be overcome upon proof by clear and convincing evidence, in a proceeding instituted within the time provided in § 16-2342(c) or (d), that the presumed parent is not the child's genetic parent. The Court shall try the question of parentage, and may determine that the presumed parent is the child's parent, notwithstanding evidence that the presumed parent is not the child's genetic parent, after giving due consideration to:

(A) Whether the conduct of the mother or the presumed parent should preclude that party from denying parentage;

(B) The child's interests; and

(C) The duration and stability of the relationship between the child, the presumed parent, and the genetic parent.

(2) If questioned, the presumption created by subsection (a-1)(2) that a child born to the mother is the child of the mother's female domestic partner or spouse may be overcome pursuant to paragraph (1) of this subsection or upon proof by clear and convincing evidence that the presumed parent did not hold herself out as a parent of the child.

(3) Notwithstanding any other provision in this title, when a child has both a presumed parent and a parent established by a voluntary acknowledgment of paternity, pursuant to § 16-909.01(a)(1), the Court shall determine parentage after giving due consideration to the child's interests and the duration and stability of the relationship between the child, the presumed parent, and the acknowledged parent.

(b-1) When a child has no presumed parent under subsection (a)(1) through (4) of this section or under subsection (a-1)(2) of this section, a conclusive presumption of parentage shall be created:

(1) Upon a result and an affidavit from a laboratory of a genetic test of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary of the U.S. Department of Health and Human Services that is performed by a laboratory approved by such a body indicating a 99% probability that the person is the genetic parent of the child; or

(2) If the father has acknowledged paternity in writing as provided in section 16-909.01(a)(1).

(b-2)(1) Subject to the requirements of this section, the court may issue a judgment adjudicating the parentage of a child born to parents who reside outside of the District of Columbia in a proceeding to determine parentage, pursuant to § 16-2342, if:

(A) The child was born in the District of Columbia;

(B) Both individuals seeking a judgment adjudicating parentage have a legal relationship with the child through a presumption of parentage under this section or meet the requirements of parentage in subsection (e) of this section; and

(C) Both parents submit to the jurisdiction of the District by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction.

(2) Upon the determination of parentage under this subsection, the court shall issue a judgment adjudicating the parentage of the child.

(3) This subsection shall apply retroactively to all children born in the District of Columbia on or after July 18, 2009.

(c) The parent-child relationship shall be conclusively established:

(1) Upon a determination of the parentage of a child by the following:

(A) The Superior Court of the District of Columbia under the provisions of subchapter II of Chapter 23 of this title or subsection (b) of this section;

(B) Any other court of competent jurisdiction;

(C) The IV-D agency of another state, in compliance with jurisdictional and procedural requirements of that state; or

(D) Any entity of another state authorized to determine parentage, in compliance with jurisdictional and procedural requirements of that state;

(2) When a child has no presumed parent under subsection (a)(1) through (4) of this section or under subsection (a-1)(2) of this section, by a voluntary acknowledgment of paternity pursuant to section 16-909.01(a)(1), unless either signatory rescinds the acknowledgment pursuant to section 16-909.01(a-1); or

(3) By a voluntary acknowledgment of paternity in another state pursuant to the laws and procedures of that state, unless either signatory rescinds the acknowledgment pursuant to the laws and procedures of that state.

(c-1) A parent-child relationship that has been established pursuant to subsection (b-1)(1) of this section may be challenged upon the same grounds and through the same procedures as are applicable to a final judgment of the Superior Court. A parent-child relationship that has been established pursuant to subsection (b-1)(2) of this section or section 16-909.01(a)(1) may be challenged in the Superior Court after the rescission period provided by section 16-909.01(a-1) through the same procedures as are applicable to a final judgment of the Superior Court, but only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenging party. The legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment of parentage may not be suspended during the challenge, except for good cause shown.

(d) The parent-child relationship between an adoptive parent and a child may be established conclusively by proof of adoption.

(e)(1) A person who consents to the artificial insemination of a woman as provided in subparagraph (A) or (B) of this paragraph with the intent to be the parent of her child, is conclusively established as a parent of the resulting child.

(A) Consent by a woman, and a person who intends to be a parent of a child born to the woman by artificial insemination, shall be in writing signed by the woman and the intended parent.

(B) Failure of a person to sign a consent required by subparagraph (A) of this paragraph, before or after the birth of the child, shall not preclude a finding of intent to be a parent of the child if the woman and the person resided together in the same household with the child and openly held the child out as their own.

(2) A donor of semen to a person for artificial insemination, other than the donor's spouse or domestic partner, is not a parent of a child thereby conceived unless the donor and the person agree in writing that said donor shall be a parent. Notwithstanding any other provision in this title, genetic test results shall not establish parentage of a semen donor unless:

(A) The donor of semen is the spouse or domestic partner of the child's mother; or

(B) The donor and the child's mother agree in writing that said donor shall be a parent.

(f) For the purposes of this section, the term:

(1) "Domestic partner" shall have the same meaning as provided in § 32-701(3), but shall exclude a domestic partner who is the parent, grandparent, sibling, child, grandchild, niece, nephew, aunt, or uncle of a woman who gives birth to a child.

(2) "Domestic partnership" shall have the same meaning as provided in § 32-701(4), but shall exclude a domestic partnership where a domestic partner is the parent, grandparent, sibling, child, grandchild, niece, nephew, aunt, or uncle of a woman who gives birth to a child.

(Dec. 23, 1963, Pub. L. 88-241, § 1, 77 Stat. 561; Apr. 7, 1977, D.C. Law 1-107, title I, § 106, 23 DCR 8737; Feb. 24, 1987, D.C. Law 6-166, § 33(a)(3), 33 DCR 6710; June 18, 1991, D.C. Law 9-5, § 2(c), 38 DCR 2717; Aug. 17, 1991, D.C. Law 9-39, § 2(c), 38 DCR 4970; Mar. 16, 1995, D.C. Law 10-223, § 2(b), 41 DCR 8051; Apr. 3, 2001, D.C. Law 13-269, § 106(c), 48 DCR 1270; July 18, 2008, D.C. Law 18-33, § 3(d), 56 DCR 4269; Dec. 10, 2009, D.C. Law 18-88, § 402, 56 DCR 7413; Mar. 19, 2013, D.C. Law 19-233, § 2(b), 59 DCR 14769.)

Section references. — This section is referenced in § 7-205, § 16-908, § 16-909.01, § 16-2342, § 16-2343, § 16-2343.01, § 16-2345, § 16-2349.01, and § 16-4601.02.

Effect of amendments.

The 2013 amendment by D.C. Law 19-233 substituted "domestic partner or spouse" for "domestic partner" in (b)(2); and added (b-2).

Legislative history of Law 19-233. — Law 19-233, the "Judicial Declaration of Parentage Amendment Act of 2011," was introduced in Council and assigned Bill No. 19-615. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 2, 2012, respectively. Signed by the Mayor on Nov. 20, 2012, it was assigned Act No. 19-550 and transmitted to Congress for its review. D.C. Law 19-233 became effective on Mar. 19, 2013.

§ 16-910. Assignment and equitable distribution of property.

Section references. — This section is referenced in § 19-604.13.

CASE NOTES

ANALYSIS

Burden of proof.
Evidence.
Marital property.
Valuation of property.

Burden of proof.

Even assuming that husband met his burden of proving that "most" of household items listed in packing inventory were his sole and separate property, trial court's distribution of 80% of marital estate to wife was equitable, in action for divorce; wife had legal or equitable interest in property, in that parties were married for approximately 12 years, husband had prevented wife from working outside home, wife contributed to health and happiness of family, husband refused to seek job commensurate with his skills after he left wife, husband cancelled joined credit cards and depleted joint checking account, husband transferred almost $50,000 of marital assets to woman other than his wife, and wife had made improvements to marital residence, and but for husband's dissipation of marital estate, wife would have received substantially higher amount. Abulqasim v. Mahmoud, 2012 WL 3242986 (2012).

Evidence.

Best evidence rule did not apply to wife's testimony about e-mail that husband had sent to wife's sister professing his love for sister and plan to meet sister in Egypt, in action for divorce, where e-mail testimony was not offered to prove truth of romantic relationship between husband and sister but to explain wife's actions, and to extent trial court mentioned romantic relationship between husband and sister in context of equitable distribution of marital, it was in connection with husband's decision to abandon wife and children and transfer of almost $50,000 in marital assets to sister. Abulqasim v. Mahmoud, 2012 WL 3242986 (2012).

Marital property.

As marital property, the S Street property was subject to equitable distribution between the parties, a distribution that permitted the court to take into account factors including each party's contribution as a homemaker or otherwise to the family unit, D.C. Code § 16-910(b)(7). Because the wife contributed substantially to the marriage by bearing and raising the children and freeing the husband to build his practice and pursue his business ventures, and because the court distributed most of the other marital realty, eleven parcels, to the husband, the appellate court could not say that the trial court abused its discretion in awarding the S Street property to the wife. Araya v. Keleta, 65 A.3d 40, 2013 D.C. App. LEXIS 77 (2013), writ of certiorari denied by 134 S. Ct. 426, 187 L. Ed. 2d 282, 2013 U.S. LEXIS 7370, 82 U.S.L.W. 3214 (U.S. 2013).

Where a spouse's separate property has been combined or blended with marital property in such a way that: (1) the two items of property came to be used as one property; and (2) one or both properties would be destroyed or damaged or left with a gaping deficiency or defect if the properties were separated, the Darling rule permits the trial court to treat the separate property as transformed and the combined or blended property as marital property that is subject to equitable distribution under D.C. Code § 16-910(b). And while District of Columbia precedent does not permit courts to conclude that use of a real property owned by one spouse as the family home is generally enough by itself to convert the property to marital property, the fact that a combined property has been used as the family home is a factor that the trial court may find weighs, in conjunction with the factors listed above, in favor of a conclusion that the separate property has lost its character as separate property and that the combined property is marital property; that is because the fact that a combined property has served as the spouses' and their children's family home may give rise to an objectively reasonable expectation of an interest in that property on the part of the other spouse. Araya v. Keleta, 65 A.3d 40, 2013 D.C. App. LEXIS 77 (2013), writ of certiorari denied by 134 S. Ct. 426, 187 L. Ed. 2d 282, 2013 U.S. LEXIS 7370, 82 U.S.L.W. 3214 (U.S. 2013).

Trial court did not err in awarding to the wife real property that the husband brought to the marriage as his sole and separate property because where a spouse's separate property had been combined or blended with marital property in such a way that: (1) the two items of property came to be used as one property; and (2) one or both properties would be destroyed or damaged or left with a gaping deficiency or

defect if the properties were separated, the Darling rule permitted the trial court to treat the separate property as transformed and the combined or blended property as marital property that was subject to equitable distribution under D.C. Code § 16-910(b). In the instant case all of those factors were present since the New Jersey Avenue property was acquired by the husband as his sole and separate property before the parties' marriage, but the house on the New Jersey Avenue property was annexed to the contiguous S Street house through creation of a passageway, enabling the family to use the two structures as a single dwelling, and the family did so use it; in addition, the S Street house was rebuilt without a kitchen, a defect that meant it could not be used as a separate residence unless a room was converted to a kitchen, and therefore, the appellate court affirmed the trial court's ruling that the two structures together were marital property that could be distributed pursuant to D.C. Code § 16-910(b). Araya v. Keleta, 65 A.3d 40, 2013 D.C. App. LEXIS 77 (2013), writ of certiorari denied by 134 S. Ct. 426, 187 L. Ed. 2d 282, 2013 U.S. LEXIS 7370, 82 U.S.L.W. 3214 (U.S. 2013).

Valuation of property.

Passage of nearly nine months from the date on which trial court assigned value to marital residence and the date on which trial court entered judgment of divorce rendered the valuation stale such that trial court should have reconsidered the valuation for purposes of maintaining an equitable distribution of marital property; housing market was collapsing at the time of proceedings. Murphy v. Murphy, 46 A.3d 1093, 2011 D.C. App. LEXIS 794 (2012).

LAW REVIEWS AND JOURNAL COMMENTARIES

The Divisibility of Pension Interests on Divorce: The District of Columbia Ups the Ante. 33 Cath.U.L.Rev. 1089, (1984).

The Marital/Separate Property Distinction in the District of Columbia—Revisited. 37 Cath.U.L.Rev. 645, (1988).

§ 16-911. Pendente lite relief.

Section references. — This section is referenced in § 16-831.03, § 16-916, and § 16-4806.

CASE NOTES

Attorney fees.

In the absence of statutory or rule authority, attorney fees generally are not allowed as an element of damages, costs, or otherwise; however, this general presumption may be altered where, as in domestic cases, statutory authority expressly articulates otherwise. Murphy v. Murphy, 46 A.3d 1093, 2011 D.C. App. LEXIS 794 (2012).

Although a spouse's failure to cooperate—and whether that spouse made litigation burdensome and oppressive—may be considered in determining whether to award attorney fees as suit money in a divorce proceeding, such a consideration may be made only after a finding that the party requesting fees needs suit money to carry on the divorce litigation. McClintic v. McClintic, 39 A.3d 1274, 2012 D.C. App. LEXIS 133 (2012).

Trial court did not err when it concluded that it was authorized to award the wife attorney's fees under D.C. Code § 16-911(a)(1) (2001) because the practice of making attorney's fee awards after trial, and after the divorce decree had been issued, was consistent with the trial court's statutory authority to award fees to enable such other spouse to conduct the case; moreover, although the husband asserted that the wife never showed a need for suit money, the undisputed evidence was that, during most of the marriage and at the time of divorce, the wife was unemployed, had no income, and had hospital and credit card debt that she was unable to pay. Properly, the fee award was based on the actual services performed by the attorney, and on an assessment of counsel's skill and experience, the reasonableness of his rates over 14 months of representation, the successful result obtained, the husband's financial ability to pay the award, and the wife's lack of financial ability to do so. Araya v. Keleta, 65 A.3d 40, 2013 D.C. App. LEXIS 77 (2013), writ of certiorari denied by 134 S. Ct. 426, 187 L. Ed. 2d 282, 2013 U.S. LEXIS 7370, 82 U.S.L.W. 3214 (U.S. 2013).

Applied in Cave v. Scheulov, 64 A.3d 190, 2013 D.C. App. LEXIS 153 (2013).

LAW REVIEWS AND JOURNAL COMMENTARIES

Fit To Be Tied: On Custody, Discretion, and Sexual Orientation. Mark Strasser, 46 Am.U.L.Rev. 841 (1997).

Guardianship for Coercively Controlled Battered Women: Breaking the Control of the Abuser. Ruth Jones, 88 Geo.L.J. 605 (2000).

The District Of Columbia's Joint Custody Presumption: Misplaced Blame And Simplistic Solutions, 46 Catholic University Law Review 767.

§ 16-914. Custody of children.

(a)(1)(A) In any proceeding between parents in which the custody of a child is raised as an issue, the best interest of the child shall be the primary consideration. The race, color, national origin, political affiliation, sex, sexual orientation, or gender identity or expression of a party, in and of itself, shall not be a conclusive consideration. The Court shall make a determination as to the legal custody and the physical custody of a child. A custody order may include:

(i) sole legal custody;

(ii) sole physical custody;

(iii) joint legal custody;

(iv) joint physical custody; or

(v) any other custody arrangement the Court may determine is in the best interest of the child.

(B) For the purposes of this paragraph, the term:

(i) "Legal custody" means legal responsibility for a child. The term "legal custody" includes the right to make decisions regarding that child's health, education, and general welfare, the right to access the child's educational, medical, psychological, dental, or other records, and the right to speak with and obtain information regarding the child from school officials, health care providers, counselors, or other persons interacting with the child.

(ii) "Physical custody" means a child's living arrangements. The term "physical custody" includes a child's residency or visitation schedule.

(2) Unless the court determines that it is not in the best interest of the child, the court may issue an order that provides for frequent and continuing contact between each parent and the minor child or children and for the sharing of responsibilities of child-rearing and encouraging the love, affection, and contact between the minor child or children and the parents regardless of marital status. There shall be a rebuttable presumption that joint custody is in the best interest of the child or children, except in instances where a judicial officer has found by a preponderance of the evidence that an intrafamily offense as defined in § 16-1001(8), an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.02), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children's Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; D.C. Official Code § 4-1341.01), or where parental kidnapping as defined in D.C. Official Code section 16-1021 through section 16-1026 has occurred. There shall be a rebuttable presumption that joint custody is not in the best interest of the child or children if a judicial officer finds by a

preponderance of the evidence that an intrafamily offense as defined in § 16-1001(8), an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.02), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children's Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; D.C. Official Code § 4-1341.01), or where parental kidnapping as defined in D.C. Official Code section 16-1021 through section 16-1026 has occurred.

(3) In determining the care and custody of a child, the best interest of the child shall be the primary consideration. To determine the best interest of the child, the court shall consider all relevant factors, including, but not limited to:

(A) the wishes of the child as to his or her custodian, where practicable;

(B) the wishes of the child's parent or parents as to the child's custody;

(C) the interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may emotionally or psychologically affect the child's best interest;

(D) the child's adjustment to his or her home, school, and community;

(E) the mental and physical health of all individuals involved;

(F) evidence of an intrafamily offense as defined in section 16-1001(5) [now § 16-1001(8)];

(G) the capacity of the parents to communicate and reach shared decisions affecting the child's welfare;

(H) the willingness of the parents to share custody;

(I) the prior involvement of each parent in the child's life;

(J) the potential disruption of the child's social and school life;

(K) the geographic proximity of the parental homes as this relates to the practical considerations of the child's residential schedule;

(L) the demands of parental employment;

(M) the age and number of children;

(N) the sincerity of each parent's request;

(O) the parent's ability to financially support a joint custody arrangement;

(P) the impact on Temporary Assistance for Needy Families, or Program on Work, Employment, and Responsibilities, and medical assistance; and

(Q) the benefit to the parents.

(a-1) For the purposes of this section, if the judicial officer finds by a preponderance of evidence that a contestant for custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. In determining visitation arrangements, if the judicial officer finds that an intrafamily offense has occurred, the judicial officer shall only award visitation if the judicial officer finds that the child and custodial parent can be adequately protected from harm inflicted by the other party. The party found to have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development.

(a-2) Repealed.

(a-3)(1) A minor parent, or the parent, guardian, or other legal representative of a minor parent on the minor parent's behalf, may initiate a custody proceeding under this chapter.

(2) For the purposes of this subsection, the term "minor" means a person under 18 years of age.

(b) Notice of a custody proceeding shall be given to the child's parents, guardian, or other custodian. The court, upon a showing of good cause, may permit intervention by any interested party.

(c) In any custody proceeding under this chapter, the Court may order each parent to submit a detailed parenting plan which shall delineate each parent's position with respect to the scheduling and allocation of rights and responsibilities that will best serve the interest of the minor child or children. The parenting plan may include, but shall not be limited to, provisions for:

(1) the residence of the child or children;

(2) the financial support based on the needs of the child and the actual resources of the parent;

(3) visitation;

(4) holidays, birthdays, and vacation visitation;

(5) transportation of the child between the residences;

(6) education;

(7) religious training, if any;

(8) access to the child's educational, medical, psychiatric, and dental treatment records;

(9) except in emergencies, the responsibility for medical, psychiatric, and dental treatment decisions;

(10) communication between the child and the parents; and

(11) the resolution of conflict, such as a recognized family counseling or mediation service, before application to the Court to resolve a conflict.

(d) In making its custody determination, the Court:

(1) shall consider the parenting plans submitted by the parents in evaluating the factors set forth in subsection (a)(3) of this section in fashioning a custody order;

(2) shall designate the parent(s) who will make the major decisions concerning the health, safety, and welfare of the child that need immediate attention; and

(3) may order either or both parents to attend parenting classes.

(e) Joint custody shall not eliminate the responsibility for child support in accordance with the applicable child support guideline as set forth in § 16-916.01.

(f)(1) An award of custody may be modified or terminated upon the motion of one or both parents, or on the Court's own motion, upon a determination that there has been a substantial and material change in circumstances and that the modification or termination is in the best interest of the child.

(2) When a motion to modify custody is filed, the burden of proof is on the party seeking a change, and the standard of proof shall be by a preponderance of the evidence.

(3) The provisions of this chapter shall apply to motions to modify or terminate any award of custody filed after April 18, 1996.

(g) The Court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney, or both, to represent the minor child's interests.

(h) The Court shall enter an order for any custody arrangement that is agreed to by both parents unless clear and convincing evidence indicates that the arrangement is not in the best interest of the minor child.

(i) An objection by one parent to any custody arrangement shall not be the sole basis for refusing the entry of an order that the Court determines is in the best interest of the minor child.

(j) The Court shall place on the record the specific factors and findings which justify any custody arrangement not agreed to by both parents.

(k) Notwithstanding any other provision of this section, no person shall be granted legal custody or physical custody of, or visitation with, a child if the person has been convicted of first degree sexual abuse, second degree sexual abuse, or child sexual abuse, and the child was conceived as a result of that violation. Nothing in this subsection shall be construed as abrogating or limiting the responsibility of a person described herein to pay child support.

(Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1; Oct. 1, 1976, D.C. Law 1-87, § 17, 23 DCR 2544; Apr. 7, 1977, D.C. Law 1-107, title I, § 109, 23 DCR 8737; Aug. 25, 1994, D.C. Law 10-154, § 2(b), 41 DCR 4870; Apr. 18, 1996, D.C. Law 11-112, § 2(b), 43 DCR 574; Apr. 20, 1999, D.C. Law 12-241, § 11, 46 DCR 905; Apr. 12, 2000, D.C. Law 13-91, § 142(b), 47 DCR 520; Oct. 19, 2002, D.C. Law 14-207, § 2(i), 49 DCR 7827; June 25, 2008, D.C. Law 17-177, § 10(b), 55 DCR 3696; Mar. 25, 2009, D.C. Law 17-368, § 3(a), 56; June 19, 2013, D.C. Law 19-320, § 509, 60 DCR 3390.)

Section references. — This section is referenced in § 16-831.03 and § 16-911.

Effect of amendments.

The 2013 amendment by D.C. Law 19-320 added (k).

Emergency legislation.

For temporary addition of (k), see § 509 of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

For temporary (90 days) amendment of this section, see § 509 of the Omnibus Criminal Code Amendment Congressional Review Emergency Act of 2013 (D.C. Act 20-44, April 1, 2013, 60 DCR 5381, 20 DCSTAT 1281).

Legislative history of Law 19-320. — Law 19-320, the "Omnibus Criminal Code Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

CASE NOTES

ANALYSIS

Construction with other law.
Custody determination upheld.
Doctor-patient privilege.
Findings.

Construction with other law.

Child custody statute, D.C. Code § 16-914, does not create an implied exception in custody cases to the privilege statute, D.C. Code § 14-307, which protects the confidentiality of mental health treatment information. Adler v. Adler, 2012 D.C. Super. LEXIS 10 (Dec. 11, 2012).

Custody determination upheld.

Trial court did not fail to honor the presump-

tion in favor of joint custody when it granted an ex-wife joint legal custody and primary physical custody of the parties' child because a custody arrangement that granted primary physical custody to one parent and visitation to the other was considered a joint custody arrangement. Estopina v. O'Brian, 68 A.3d 790, 2013 D.C. App. LEXIS 382 (2013).

Trial court did not abuse its discretion in granting primary physical custody, including the right to relocate, to a mother because it weighed all of the appropriate factors, and no inappropriate factors, in determining what custody arrangement would be in the best interests of the child; the trial court thoroughly considered each of the factors necessary to determining the best interests of the child pursuant to D.C. Code § 16-914(a)(3), and many additional relocation factors before reaching a custody decision. Estopina v. O'Brian, 68 A.3d 790, 2013 D.C. App. LEXIS 382 (2013).

Doctor-patient privilege.

In a custody case, the court may order the disclosure of a party's therapy records and other confidential mental health treatment information only if it finds: (1) that the information is necessary to the resolution of a disputed issue material to the safety of the child, a party's fitness as a parent, or a central aspect of the determination of the child's best interest; and (2) that other sources of information sufficient to enable the court to protect the child and advance the child's best interest are unavailable. Adler v. Adler, 2012 D.C. Super. LEXIS 10 (Dec. 11, 2012).

In custody litigation, the father's motion for leave to conduct discovery of the mother's confidential mental health treatment information was denied, as he did not establish that other sources of information concerning her mental health were unavailable, since she had agreed to submit to a mental examination by a psychologist. Adler v. Adler, 2012 D.C. Super. LEXIS 10 (Dec. 11, 2012).

In a custody case where the father challenged the mother's mental health, by generally denying that her depression and anxiety compromised her fitness as a parent, the mother did not make an implied waiver of her D.C. Code § 14-307 privilege protecting the confidentiality of her mental health treatment information. Adler v. Adler, 2012 D.C. Super. LEXIS 10 (Dec. 11, 2012).

Findings.

Trial court did not manifestly abuse its discretion in determining that it was in the children's best interest to award physical custody of the children to the wife because the court's findings were not against the weight of the evidence as credited by the court, and the appellate court discerned no clear error in any of the court's findings; moreover, the fact that both parties had committed intra-family offenses did not mean that the offenses simply canceled each other out, necessitating an award of joint custody. Finally, the court was not precluded from making a custody determination that differed from the "50:50" custody arrangement that the judge ordered pendente lite and that the judge ordered in granting the civil protection orders. Araya v. Keleta, 65 A.3d 40, 2013 D.C. App. LEXIS 77 (2013), writ of certiorari denied by 134 S. Ct. 426, 187 L. Ed. 2d 282, 2013 U.S. LEXIS 7370, 82 U.S.L.W. 3214 (U.S. 2013).

Applied in In re D.S., 52 A.3d 887, 2012 D.C. App. LEXIS 481 (2012), substituted opinion at 2012 D.C. App. LEXIS 736 (D.C. Sept. 20, 2012), vacated by 2014 D.C. App. LEXIS 62 (D.C. Mar. 13, 2014).

LAW REVIEWS AND JOURNAL COMMENTARIES

Comparing Race And Sex Discrimination In Custody Cases, 28 Hofstra Law Review 877.

This Child Does Have Two Mothers: Redefining Parenthood To Meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families. Nancy D. Polikoff, 78 Geo.L.J. 459 (1990).

CHAPTER 10. PROCEEDINGS REGARDING INTRAFAMILY OFFENSES.

Subchapter I. Intrafamily Proceedings Generally

Sec.
16-1005. Hearing; evidence; protection order.

Subchapter II. Parental Kidnapping

16-1024. Penalties.

Subchapter V. Domestic Violence Fatality Review Board

Sec.
16-1054. Access to information.

Subchapter I. Intrafamily Proceedings Generally.

§ 16-1001. Definitions.

Section references. — This section is referenced in § 2-1401.02, § 2-1402.21, § 4-1305.06, § 4-1345.01, § 7-2501.01, § 14-306, § 14-310, § 14-311, § 16-801, § 16-831.01, § 16-914, § 22-3020.53, § 22-4503, § 31-2231.11, § 32-131.01, § 42-3505.01, § 42-3505.07, § 42-3505.08, and § 51-131.

CASE NOTES

Applied in Porter v. Jones, 2011 D.C. Super. LEXIS 17 (Aug. 9, 2011).

§ 16-1003. Petition for civil protection.

Section references. — This section is referenced in § 16-1005 and § 16-2301.

CASE NOTES

Applied in Porter v. Jones, 2011 D.C. Super. LEXIS 17 (Aug. 9, 2011).

§ 16-1004. Petition; notice; temporary order.

Section references. — This section is referenced in § 16-1005.

CASE NOTES

Applied in Porter v. Jones, 2011 D.C. Super. LEXIS 17 (Aug. 9, 2011).

§ 16-1005. Hearing; evidence; protection order.

(a) Individuals served with notice in accordance with § 16-1004 shall appear at the hearing.

(a-1)(1) In a case where the Attorney General files the petition on behalf of a petitioner pursuant to § 16-1003(c), the petitioner is not a required party.

(2) In a case where a parent, guardian, custodian, or other appropriate adult files a petition on behalf of a minor petitioner under the age of 12, the minor petitioner is not a required party.

(3) In a hearing under this section, if a parent, guardian, custodian, or other appropriate adult has petitioned for civil protection on behalf of a minor petitioner 12 years of age or older, the court shall consider the expressed wishes of the minor petitioner in deciding whether to issue an order pursuant to this section and in determining the contents of such an order.

(4) If a respondent is a minor, or if the petitioner is a minor and at least 12 years of age, and if the minor is not accompanied by a parent, guardian, custodian, other appropriate adult, or represented by an attorney, the court may appoint an attorney to represent the minor if such an appointment would

not unduly delay the issuance or denial of a protection order. The court may promulgate rules for the appointment of attorneys.

(b) Notwithstanding section 14-306, in a hearing under this section, one spouse shall be a competent and compellable witness against the other and may testify as to confidential communications, but testimony compelled over a claim of a privilege conferred by such section shall be inadmissible in evidence in a criminal trial over the objection of a spouse entitled to claim that privilege.

(c) If, after hearing, the judicial officer finds that there is good cause to believe the respondent has committed or threatened to commit a criminal offense against the petitioner or against petitioner's animal or an animal in petitioner's household, the judicial officer may issue a protection order that:

(1) Directs the respondent to refrain from committing or threatening to commit criminal offenses against the petitioner and other protected persons;

(2) Requires the respondent to stay away from or have no contact with the petitioner and any other protected persons or locations;

(3) Requires the respondent to participate in psychiatric or medical treatment or appropriate counseling programs;

(4) Directs the respondent to refrain from entering, or to vacate, the dwelling unit of the petitioner when the dwelling is:

(A) Marital property of the parties;

(B) Jointly owned, leased, or rented and occupied by both parties; provided, that joint occupancy shall not be required if the respondent's actions caused the petitioner to relinquish occupancy;

(C) Owned, leased, or rented by the petitioner individually; or

(D) Jointly owned, leased, or rented by the petitioner and a person other than the respondent;

(5) Directs the respondent to relinquish possession or use of certain personal property owned jointly by the parties or by the petitioner individually;

(6) Awards temporary custody of a minor child or children of the parties;

(7) Provides for visitation rights with appropriate restrictions to protect the safety of the petitioner;

(8) Awards costs and attorney fees;

(9) Orders the Metropolitan Police Department to take such action as the judicial officer deems necessary to enforce its orders;

(10) Directs the respondent to relinquish possession of any firearms;

(10A) Directs the care, custody, or control of a domestic animal that belongs to petitioner or respondent or lives in his or her household;

(11) Directs the respondent to perform or refrain from other actions as may be appropriate to the effective resolution of the matter; or

(12) Combines 2 or more of the preceding provisions.

(c-1) For the purposes of subsection (c)(6) and (7) of this section, if the judicial officer finds by a preponderance of evidence that a contestant for custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. In determining visitation arrangements, if the

judicial officer finds that an intrafamily offense has occurred, the judicial officer shall only award visitation if the judicial officer finds that the child and custodial parent can be adequately protected from harm inflicted by the other party. The party found to have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development.

(d) A protection order issued pursuant to this section shall be effective for such period up to one year as the judicial officer may specify, but the judicial officer may, upon motion of any party to the original proceeding, extend, rescind, or modify the order for good cause shown.

(e) Any final order issued pursuant to this section and any order granting or denying extension, modification, or rescission of such order shall be appealable.

(f) Violation of any temporary or final order issued under this subchapter, or violation in the District of Columbia of any valid foreign protection order, as that term is defined in subchapter IV of this chapter, or respondent's failure to appear as required by subsection (a) of this section, shall be punishable as contempt. Upon conviction, criminal contempt shall be punished by a fine of not more than the amount set forth in [§ 22-3571.01] or imprisonment for not more than 180 days, or both.

(g) Any person who violates any protection order issued under this subchapter, or any person who violates in the District of Columbia any valid foreign protection order, as that term is defined in subchapter IV of this chapter, shall be chargeable with a misdemeanor and upon conviction shall be punished by a fine of not more than the amount set forth in [§ 22-3571.01] or by imprisonment for not more than 180 days, or both.

(g-1) Enforcement proceedings under subsections (f) and (g) of this section in which the respondent is a child as defined by § 16-2301(3) shall be governed by subchapter I of Chapter 23 of this title.

(h) For purposes of establishing a violation under subsections (f) and (g) of this section, an oral or written statement made by a person located outside the District of Columbia to a person located in the District of Columbia by means of telecommunication, mail, or any other method of communication shall be deemed to be made in the District of Columbia.

(i) Orders entered with the consent of the respondent but without an admission that the conduct occurred shall be punishable under subsection (f), (g), or (g-1) of this section.

(July 29, 1970, 84 Stat. 547, Pub. L. 91-358, title I, § 131(a); Sept. 14, 1982, D.C. Law 4-144, § 6, 29 DCR 3131; Aug. 25, 1994, D.C. Law 10-154,§ 2(c), 41 DCR 4870; Mar. 21, 1995, D.C. Law 10-237, § 2(b), 42 DCR 36; Mar. 24, 1998, D.C. Law 12-81, § 10(k), 45 DCR 745; Apr. 11, 2003, D.C. Law 14-296, § 2(b), 50 DCR 320; Mar. 13, 2004, D.C. Law 15-105, §§ 10(a), 54(b), 51 DCR 881; Dec. 5, 2008, D.C. Law 17-281, § 107(b), 55 DCR 9186; Mar. 25, 2009, D.C. Law 17-368, § 3(b)(3), 56 DCR 1338; June 3, 2011, D.C. Law 18-377, § 5, 58 DCR 1174; June 11, 2013, D.C. Law 19-317, § 281(a), 60 DCR 2064.)

Section references. — This section is referenced in § 2-1402.21, § 5-127.04, § 7-2502.03, § 16-1003, § 16-1004, § 16-1042, § 42-3505.07, and § 42-3505.08.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted "of not more than the amount set forth in [§ 22-3571.01]" for "not exceeding $1,000" in (f) and (g).

Emergency legislation.

For temporary (90 days) amendment of this section, see § 281(a) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Attorney fees.
Contempt.
Prosecutor required.

Attorney fees.

Trial court erred in denying a wife's request for attorney's fees under D.C. Code § 16-1005(c)(8) after she successfully petitioned for a civil protection order against her husband because the trial court too narrowly circumscribed the criteria for awarding attorney's fees in the CPO proceeding; no "condition precedent" factors had to be resolved in the wife's favor before the trial court considered all other relevant factors in determining whether to award attorney's fees in a CPO proceeding. Cave v. Scheulov, 64 A.3d 190, 2013 D.C. App. LEXIS 153 (2013).

Given the statutory policy creating incentives for victims of domestic violence to seek civil protection orders (CPO) for their protection, a finding of "burdensome or oppressive litigation" is not a condition precedent to an award of attorney's fees in a CPO proceeding; based on the policy underlying the CPO statute there may be instances in which the prospect of attorney's fees may be essential to enable a victim of domestic violence to bring and conduct the case, a rationale that is available, for example, under certain circumstances during the pendency of a divorce proceeding. Cave v. Scheulov, 64 A.3d 190, 2013 D.C. App. LEXIS 153 (2013).

Whatever is meant by "oppressive or burdensome litigation" it does not call to mind the higher level of "vexatious" conduct found only in "extraordinary circumstances" that justify the bad faith exception to the American Rule, but this is not to say that such conduct could not justify a fee award in domestic relations litigation; it is to say, rather, that the common law jurisprudence generated by the bad faith exception is not to be incorporated as the guiding light for defining "oppressive or burdensome litigation" in a civil protection order proceeding and other domestic relations disputes providing for statutory awards of attorney's fees. Cave v. Scheulov, 64 A.3d 190, 2013 D.C. App. LEXIS 153 (2013).

Contempt.

Petitioners may initiate a contempt proceeding on a pro se basis by filing motions to adjudicate criminal contempt, but, in those cases in which the United States Attorney's Office for the District of Columbia declines to participate, the matter cannot proceed on a pro se basis past initiation. Rather, the matter will only proceed to arraignment and beyond if an assigned or appointed attorney elects to pursue charges of contempt. Porter v. Jones, 2011 D.C. Super. LEXIS 17 (Aug. 9, 2011).

Prosecutor required.

Absence of counsel representing the government at defendant's criminal trial for contempt for violating an intrafamily Civil Protection Order constituted plain error because it was an obvious and structural defect that compromised the fairness, integrity, and public reputation of judicial proceedings. The trial court erred by allowing the complainant to personally prosecute defendant, with substantial assistance from the trial judge, because any contempt prosecution had to be brought in the name of]and pursuant to the sovereign power of the United States and the complainant was not authorized to act as a government agent. In re Taylor, 73 A.3d 85, 2013 D.C. App. LEXIS 435 (2013).

§ 16-1006. Jurisdiction.

CASE NOTES

Applied in Porter v. Jones, 2011 D.C. Super. LEXIS 17 (Aug. 9, 2011).

Subchapter II. Parental Kidnapping.

§ 16-1024. Penalties.

(a) A person who violates any provision of § 16-1022 and who takes the child to a place within the District, or detains or conceals the child within the District of Columbia is guilty of a misdemeanor and on conviction is subject to fine not exceeding $250 or performance of community service not exceeding 240 hours, or both.

(b) A person who violates any provision of § 16-1022 and who takes the child to a place outside the District or detains or conceals the child outside the District shall be punished as follows:

(1) If the child is out of the custody of the lawful custodian for not more than 30 days, the person is guilty of a felony and on conviction is subject to a fine not more than the amount set forth in [§ 22-3571.01] or imprisonment for 6 months, or both, except that if the person releases the child without injury in a safe place prior to arrest, the person is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $250, or performance of community service not exceeding 240 hours, or imprisonment not exceeding 30 days, or a combination of all three.

(2) If the child is out of the custody of the lawful custodian for more than 30 days, the person is guilty of a felony and on conviction is subject to a fine of not more than the amount set forth in [§ 22-3571.01] or imprisonment for 1 year, or both, except that if the person releases the child without injury in a safe place prior to arrest, the person is guilty of a misdemeanor and, on conviction, is subject to a fine not more than the amount set forth in [§ 22-3571.01] or imprisonment not exceeding 60 days, or both.

(May 23, 1986, D.C. Law 6-115, § 5, 33 DCR 2424; May 10, 1989, D.C. Law 7-231, § 25(e), 36 DCR 492; June 11, 2013, D.C. Law 19-317, § 281(b), 60 DCR 2064.)

Section references. — This section is referenced in § 23-563.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in [§ 22-3571.01]" for "not exceeding $1,000" in (b)(1); and in (b)(2), substituted "of not more than the amount set forth in [§ 22-3571.01]" for "not exceeding $5,000", and substituted "not more than the amount set forth in [§ 22-3571.01]" for "not exceeding $500".

Emergency legislation. — For temporary (90 days) amendment of this section, see § 281(b) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 16-1005.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter V. Domestic Violence Fatality Review Board.

§ 16-1054. Access to information.

(a) Notwithstanding any other provision of law, immediately upon the request of the Board and as necessary to carry out the Board's purpose and duties, the Board shall be provided, without cost and without authorization of the persons to whom the information or records relate, access to:

(1) All information and records of any District of Columbia agency, or their contractors, including, but not limited to, birth and death certificates, law enforcement investigation data, unexpurgated juvenile and adult criminal records, intellectual and developmental disabilities records, autopsy reports, parole and probation information and records, school records, and information records of social services, housing, and health agencies that provided services to the victim, the victim's family, or an alleged perpetrator of domestic violence which led to the death of the victim;

(2) All information and records of any private health-care providers located in the District of Columbia, including providers of mental health services who provided services to the deceased victim, the deceased victim's family, or the alleged perpetrator of domestic violence which led to the death of the victim;

(3) All information and records of any private child welfare agency, educational facility or institution, or child care provider doing business in the District of Columbia who provided services to the victim, the victim's immediate family, or the alleged perpetrator of domestic violence which led to the death of the victim; and

(4) Information made confidential by §§ 4-1302.03, 4-1303.06, 7-219, 7-1203.02, 7-1305.12, 16-2331, 16-2332, 16-2333, 16-2335, and 31-3426.

(b) The Board shall have the authority to seek information from entities and agencies outside the District of Columbia by any legal means.

(c) Notwithstanding subsection (a)(1) of this section, information and records concerning a current law enforcement investigation may be withheld, at the discretion of the investigating authority, if disclosure of the information would compromise a criminal investigation or prosecution.

(d) If information or records are withheld under subsection (c) of this section, a report on the status of the investigation shall be submitted to the Board by the investigating authority every 3 months until the earliest of the following events occurs:

(1) The investigation is concluded;

(2) The investigating authority determines that providing the information will no longer compromise the investigation; or

(3) The information or records are provided to the Board.

(e) All records and information obtained by the Board pursuant to subsections (a) and (b) of this section pertaining to the deceased victim or any other individual shall be destroyed immediately following the preparation of the Board's annual report. All additional information concerning a review, except statistical data, shall be destroyed by the Board one year after publication of the Board's annual report.

(Apr. 11, 2003, D.C. Law 14-296, § 2(c), 50 DCR 320; Mar. 13, 2004, D.C. Law 15-105, § 10(b), 51 DCR 881; Sept. 26, 2012, D.C. Law 19-169, § 20(a), 59 DCR 5567.)

Effect of amendments.

The 2012 amendment by D.C. Law 19-169 substituted "intellectual" for "mental retardation" in (a)(1).

Legislative history of Law 19-169. — Law 19-169, the "People First Respectful Language Modernization Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-189. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and transmitted to Congress for its review. D.C. Law 19-169 became effective on Sept. 26, 2012.

Editor's notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

Chapter 13. Eminent Domain.

Subchapter II. Real Property for District of Columbia.

§ 16-1311. Condemnation proceedings by District of Columbia.

Section references. — This section is referenced in § 2-1225.41, § 6-203, § 9-1203.06, § 10-1601.02, and § 42-3171.02.

CASE NOTES

Analysis

Compensation.
Condemnation.
Unity of use.

Compensation.

If a reasonably foreseeable integrated use has a present effect on market value then it should be compensable as a component of just compensation under the Takings Clause, U.S. Const. amend. V, and the District's condemnation statute, D.C. Code § 16-1311; when the government impairs that reasonably foreseeable integrated use by taking some of the property, the property remaining declines in value, and the owner, under the constitutional guarantee of just compensation, should be compensated for that injury. If the condemnee can demonstrate that the severing of unity causes economic damage in the marketplace to the remaining parcels, damages will be awarded. Greene v. D.C., 56 A.3d 1170, 2012 D.C. App. LEXIS 620 (2012), writ of certiorari denied by 133 S. Ct. 2404, 185 L. Ed. 2d 1106, 2013 U.S. LEXIS 3873, 81 U.S.L.W. 3648 (U.S. 2013).

Condemnation.

Property owner's allegation that city council authorized an illegal exercise of eminent domain under false pretext did not deprive trial court of subject-matter jurisdiction over condemnation proceeding. Franco v. District of Columbia, 39 A.3d 890, 2012 D.C. App. LEXIS 125 (2012).

City council could rationally have approved legislation allowing for condemnation of shopping center on the basis of economic development, so as to defeat property owner's allegation of pretext for reason for condemnation, where the council's committee on economic development reported on testimony it heard of the insufficient retail opportunities in the neighborhood, the likelihood that a redeveloped shopping center would be able to capture a significant portion of sales lost to other jurisdictions, and the potential to spur job creation and additional tax revenue. Franco v. District of Columbia, 39 A.3d 890, 2012 D.C. App. LEXIS 125 (2012).

Unity of use.

In an eminent domain case under D.C. Code § 16-1311, the trial court properly refused to present the issue of severance damages to the jury since no reasonable juror could have found a unity of use since a hypothetical plan created by the owner for litigation, and expert testimony valuing the land based on that plan, did

not prove a reasonably foreseeable unity of use any more than the owner's objective to develop her land as an assemblage, and the parcels were not mutually dependent. Greene v. D.C., 56 A.3d 1170, 2012 D.C. App. LEXIS 620 (2012), writ of certiorari denied by 133 S. Ct. 2404, 185 L. Ed. 2d 1106, 2013 U.S. LEXIS 3873, 81 U.S.L.W. 3648 (U.S. 2013).

Appellate court adopts the majority rule that the issue of unity of use for just compensation purposes is necessarily a question of fact for the jury or designated trier of fact, unless reasonable minds could not differ on the issue for the District of Columbia; while there is some contrary federal authority under Fed. R. Civ. P. 71.1(h) holding that unity of use should always be determined by the trial court, the District of Columbia rules contain no corresponding provision and D.C. Super. Ct. R. Civ. P. 71A(h) simply directs that the trial shall be conducted pursuant to the applicable statutes. D.C. Code § 16-1317 provides in turn that the jury shall hear and receive any evidence offered or submitted on behalf of the District of Columbia and by any person having an interest in the proceeding and shall return to the court, in writing, their appraisement of the value of the interests of all persons, respectively, in the real property. Greene v. D.C., 56 A.3d 1170, 2012 D.C. App. LEXIS 620 (2012), writ of certiorari denied by 133 S. Ct. 2404, 185 L. Ed. 2d 1106, 2013 U.S. LEXIS 3873, 81 U.S.L.W. 3648 (U.S. 2013).

§ 16-1317. Objections to jurors; appraisement.

Section references. — This section is referenced in § 16-1318 and § 16-1319.

CASE NOTES

Unity of use.

Appellate court adopts the majority rule that the issue of unity of use for just compensation purposes is necessarily a question of fact for the jury or designated trier of fact, unless reasonable minds could not differ on the issue for the District of Columbia; while there is some contrary federal authority under Fed. R. Civ. P. 71.1(h) holding that unity of use should always be determined by the trial court, the District of Columbia rules contain no corresponding provision and D.C. Super. Ct. R. Civ. P. 71A(h) simply directs that the trial shall be conducted pursuant to the applicable statutes. D.C. Code § 16-1317 provides in turn that the jury shall hear and receive any evidence offered or submitted on behalf of the District of Columbia and by any person having an interest in the proceeding and shall return to the court, in writing, their appraisement of the value of the interests of all persons, respectively, in the real property. Greene v. D.C., 56 A.3d 1170, 2012 D.C. App. LEXIS 620 (2012), writ of certiorari denied by 133 S. Ct. 2404, 185 L. Ed. 2d 1106, 2013 U.S. LEXIS 3873, 81 U.S.L.W. 3648 (U.S. 2013).

CHAPTER 15. FORCIBLE ENTRY AND DETAINER.

§ 16-1502. Service of summons.

Section references. — This section is referenced in § 16-5103.

LAW REVIEWS AND JOURNAL COMMENTARIES

Parker v. Frank Emmet Real Estate: Should Plaintiff's Choice of Service of Process Matter ? 32 Cath.U.L.Rev. 974, (1983).

Chapter 19. Habeas Corpus.

Sec.
16-1908. Right of other persons to writ.

§ 16-1908. Right of other persons to writ.

A person entitled to the custody of another person, unlawfully confined or detained by a third person, as a parent, guardian, committee, spouse, or domestic partner, entitled to the custody of a minor child, ward, spouse, or domestic partner, upon application to the court or a judge as provided by this chapter, and showing just cause therefor, under oath, is entitled to a writ of habeas corpus, directed to the person confining or detaining, requiring him forthwith to appear and produce before the court or judge the person so detained, and the same proceedings shall be had in relation thereto as provided for by this chapter. The court or judge, upon hearing the proofs, shall determine which of the contesting parties is entitled to the custody of the person so detained, and commit the custody of the person to the party legally entitled thereto. For the purposes of this section, the term "domestic partner" shall have the same meaning as provided in § 32-701(3).

(Dec. 23, 1963, 77 Stat. 584, Pub. L. 88-241, § 1; Mar. 24, 1998, D.C. Law 12-81, § 10(t), 45 DCR 745; Sept. 12, 2008, D.C. Law 17-231, § 20(f), 55 DCR 6758; Sept. 26, 2012, D.C. Law 19-169, § 20(b), 59 DCR 5567.)

Effect of amendments.

The 2012 amendment by D.C. Law 19-169 deleted "lunatic" following "minor child, ward."

Legislative history of Law 19-169. — Law 19-169, the "People First Respectful Language Modernization Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-189. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and transmitted to Congress for its review. D.C. Law 19-169 became effective on Sept. 26, 2012.

Editor's notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

Chapter 23. Family Division [Family Court] Proceedings.

Subchapter I. Proceedings Regarding Delinquency, Neglect, or Need of Supervision

Sec.
16-2301. Definitions.
16-2321. Disposition of child with mental illness or a substantial intellectual disability.
16-2330. Time computation.
16-2331. Juvenile case records; confidentiality; inspection and disclosure.
16-2333. Police and other law enforcement records.
16-2336. Unlawful disclosure of records; penalties.

Subchapter II. Parentage Proceedings

Sec.
16-2348. Parentage records; confidentiality; inspection and disclosure.

Subchapter III. Proceedings Regarding the Termination of Parental Rights of Certain Neglected Children

16-2364. Unlawful disclosure.

Subchapter V. Permanent Guardianship

16-2394. Unlawful disclosure.
16-2399. Permanent guardianship subsidy.

Subchapter I. Proceedings Regarding Delinquency, Neglect, or Need of Supervision.

§ 16-2301. Definitions.

As used in this subchapter —

(1) The term "Division" means the Family Division of the Superior Court of the District of Columbia. Pursuant to section 16-2301.01, the term "Division" shall be deemed to refer to the Family Court of the Superior Court of the District of Columbia.

(1A) "Family Court" means the Family Court of the Superior Court of the District of Columbia.

(2) The term "judge" means a judge assigned to the Family Division of the Superior Court.

(3) The term "child" means an individual who is under 18 years of age, except that the term "child" does not include an individual who is sixteen years of age or older and —

(A) charged by the United States attorney with (i) murder, first degree sexual abuse, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense, or (ii) an offense listed in clause (i) and any other offense properly joinable with such an offense;

(B) charged with an offense referred to in subparagraph (A)(i) and convicted by plea or verdict of a lesser included offense; or

(C) charged with a traffic offense.

For purposes of this subchapter the term "child" also includes a person under the age of twenty-one who is charged with an offense referred to in subparagraph (A)(i) or (C) committed before he attained the age of sixteen, or a delinquent act committed before he attained the age of eighteen.

(4) The term "minor" means an individual who is under the age of twenty-one years.

(5) The term "adult" means an individual who is twenty-one years of age or older.

(6) The term "delinquent child" means a child who has committed a delinquent act and is in need of care or rehabilitation.

(7) The term "delinquent act" means an act designated as an offense under the law of the District of Columbia, or of a State if the act occurred in a State, or under Federal law. Traffic offenses shall not be deemed delinquent acts unless committed by an individual who is under the age of sixteen.

(8) The term "child in need of supervision" means a child who —

(A)(i) subject to compulsory school attendance and habitually truant from school without justification;

(ii) has committed an offense committable only by children; or

(iii) is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; and

(B) is in need of care or rehabilitation.

(9)(A) The term "neglected child" means a child:

(i) who has been abandoned or abused by his or her parent, guardian, or custodian, or whose parent, guardian, or custodian has failed to make

reasonable efforts to prevent the infliction of abuse upon the child. For the purposes of this sub-subparagraph, the term "reasonable efforts" includes filing a petition for civil protection from intrafamily violence pursuant to § 16-1003;

(ii) who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or custodian;

(iii) whose parent, guardian, or custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity;

(iv) whose parent, guardian, or custodian refuses or is unable to assume the responsibility for the child's care, control, or subsistence and the person or institution which is providing for the child states an intention to discontinue such care;

(v) who is in imminent danger of being abused and another child living in the same household or under the care of the same parent, guardian, or custodian has been abused;

(vi) who has received negligent treatment or maltreatment from his or her parent, guardian, or custodian;

(vii) who has resided in a hospital located in the District of Columbia for at least 10 calendar days following the birth of the child, despite a medical determination that the child is ready for discharge from the hospital, and the parent, guardian, or custodian of the child has not taken any action or made any effort to maintain a parental, guardianship, or custodial relationship or contact with the child;

(viii) who is born addicted or dependent on a controlled substance or has a significant presence of a controlled substance in his or her system at birth;

(ix) in whose body there is a controlled substance as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian; or

(x) who is regularly exposed to illegal drug-related activity in the home.

(B) No child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall for that reason alone be considered a neglected child for the purposes of this subchapter.

(C) Subparagraph (A)(viii), (ix), and (x) of this paragraph shall apply as of October 1, 2003.

(10) Repealed.

(11) Repealed.

(12) The term "custodian" means a person or agency, other than a parent or legal guardian:

(A) to whom the legal custody of a child has been granted by the order of a court;

(B) who is acting in loco parentis; or

(C) who is a day care provider or an employee of a residential facility, in the case of the placement of an abused or neglected child.

(13) The term "detention" means the temporary, secure custody of a child in facilities, designated by the Division, pending a final disposition of a petition.

(14) The term "shelter care" means the temporary care of a child in physically unrestricting facilities, designated by the Division, pending a final disposition of a petition.

(15) The term "detention or shelter care hearing" means a hearing to determine whether a child who is in custody should be placed or continued in detention or shelter care.

(16) The term "factfinding hearing" means a hearing to determine whether the allegations of a petition are true.

(17) The term "dispositional hearing" means a hearing, after a finding of fact, to determine —

(A) whether the child in a delinquency or need of supervision case is in need of care or rehabilitation and, if so, what order of disposition should be made; or

(B) what order of disposition should be made in a neglect case.

(18) The term "probation" means a legal status created by Division order following an adjudication of delinquency or need of supervision, whereby a minor is permitted to remain in the community subject to appropriate supervision and return to the Division for violation of probation at any time during the period of probation.

(19) The term "protective supervision" means a legal status created by Division order in neglect cases whereby a minor is permitted to remain in his home under supervision, subject to return to the Division during the period of protective supervision.

(20) The term "guardianship of the person of a minor" means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor, and concern with his general welfare. It includes (but is not limited to) —

(A) authority to consent to marriage, enlistment in the armed forces of the United States, and major medical, surgical, or psychiatric treatment; to represent the minor in legal actions; and to make other decisions concerning the minor of substantive legal significance;

(B) the authority and duty of reasonable visitation (except as limited by Division order);

(C) the rights and responsibilities of legal custody when guardianship of the person is exercised by the natural or adoptive parent (except where legal custody has been vested in another person or an agency or institution); and

(D) the authority to exercise residual parental rights and responsibilities when the rights of his parents or only living parent have been judicially terminated or when both parents are dead.

(21) The term "legal custody" means a legal status created by Division order which vests in a custodian the responsibility for the custody of a minor which includes —

(A) physical custody and the determination of where and with whom the minor shall live;

(B) the right and duty to protect, train, and discipline the minor; and

(C) the responsibility to provide the minor with food, shelter, education, and ordinary medical care.

A Division order of "legal custody" is subordinate to the rights and responsibilities of the guardian of the person of the minor and any residual parental rights and responsibilities.

(22) The term "residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after transfer of legal custody or guardianship of the person, including (but not limited to) the right of visitation, consent to adoption, and determination of religious affiliation and the responsibility for support.

(23)(A) The term "abused", when used with reference to a child, means:

(i) infliction of physical or mental injury upon a child;

(ii) sexual abuse or exploitation of a child; or

(iii) negligent treatment or maltreatment of a child.

(B)(i) The term "abused", when used with reference to a child, does not include discipline administered by a parent, guardian or custodian to his or her child; provided, that the discipline is reasonable in manner and moderate in degree and otherwise does not constitute cruelty. For the purposes of this paragraph, the term "discipline" does not include:

(I) burning, biting, or cutting a child;

(II) striking a child with a closed fist;

(III) inflicting injury to a child by shaking, kicking, or throwing the child;

(IV) nonaccidental injury to a child under the age of 18 months;

(V) interfering with a child's breathing; and

(VI) threatening a child with a dangerous weapon or using such a weapon on a child. For purposes of this provision, the term "dangerous weapon" means a firearm, a knife, or any of the prohibited weapons described in § 22-4514.

(ii) The list in sub-subparagraph (i) of this subparagraph is illustrative of unacceptable discipline and is not intended to be exclusive or exhaustive.

(24) The term "negligent treatment" or "maltreatment" means failure to provide adequate food, clothing, shelter, or medical care, which includes medical neglect, and the deprivation is not due to the lack of financial means of his or her parent, guardian, or other custodian.

(25) The term "sexual exploitation" means a parent, guardian, or other custodian allows a child to engage in prostitution as defined in section 2(1) of the Control of Prostitution and Sale of Controlled Substances in Public Places Criminal Control Act of 1981, effective December 10, 1981 (D.C. Law 4-57; § 22-2701.01 [now § 22-2701.01(3)]), or means a parent, guardian, or other custodian engages a child or allows a child to engage in obscene or pornographic photography, filming, or other forms of illustrating or promoting sexual conduct as defined in section 2(5) of the District of Columbia Protection of Minors Act of 1982, effective March 9, 1983 (D.C. Law 4-173; § 22-3101(5)).

(26) The term "parenting classes" means any program which enhances the parenting skills of individuals through providing role models, discussion, training in early childhood development and child psychology, or other instruction designed to strengthen the parent, guardian, or custodian's ability to nurture children.

(27) The term "family counseling" means any psychological or psychiatric or other social service offered by a provider to the parent and 1 or more members of the extended family or the child's guardian or other caretaker of a child who has been adjudicated neglected, delinquent, or in need of supervision. A caretaker is an adult person in whose care a minor has been entrusted by written authorization of the child's parent, guardian, or legal custodian.

(28) The term "entry into foster care" means the earlier of:

(A) The date of the first judicial finding that the child has been neglected; or

(B) The date that is 60 days after the date on which the child is removed from the home.

(29) The term "Agency" means the Child and Family Services Agency established by section 6-2121.01 [§ 4-1303.01a].

(30) The term "physical injury" means bodily harm greater than transient pain or minor temporary marks.

(31) The term "mental injury" means harm to a child's psychological or intellectual functioning, which may be exhibited by severe anxiety, depression, withdrawal, or outwardly aggressive behavior, or a combination of those behaviors, and which may be demonstrated by a change in behavior, emotional response, or cognition.

(32) The term "sexual abuse" means:

(A) engaging in, or attempting to engage in, a sexual act or sexual contact with a child;

(B) causing or attempting to cause a child to engage in sexually explicit conduct; or

(C) exposing a child to sexually explicit conduct.

(33) The term "sexually explicit conduct" means actual or simulated:

(A) sexual act;

(B) sexual contact;

(C) bestiality;

(D) masturbation; or

(E) lascivious exhibition of the genitals, anus, or pubic area.

(34) The term "sexual act" shall have the same meaning as provided in section 101(8) of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3001(8)).

(35) The term "sexual contact" shall have the same meaning as provided in section 101(9) of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3001(9)).

(36) The term "controlled substance" means a drug or chemical substance, or immediate precursor, as set forth in Schedules I through V of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-901.01 et seq.), which has not been prescribed by a physician.

(37) The term "drug-related activity" means the use, sale, distribution, or manufacture of a drug or drug paraphernalia without a legally valid license or medical prescription.

(38) The term "incompetent to proceed" means that a child alleged to be delinquent is not competent to participate in a hearing on the petition pursuant to section 16-2316(a) or any other hearing in a delinquency proceeding, except scheduling, status, and competency hearings, because he or she does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or does not have a rational, as well as a factual, understanding of the proceedings against him or her.

(39) The term "psychiatrist" means a physician who is licensed to practice medicine in the District of Columbia, or is employed by the federal government, and has completed a residency in psychiatry.

(40) The term "qualified psychologist" means a person who is licensed pursuant to section 3-1205.01, and has one year of formal training within a hospital setting, or 2 years of supervised clinical experience in an organized health care setting, one of which must be post-doctoral.

(41)(A) The term "victim" means any person, organization, partnership, business, corporation, agency or governmental entity:

(i) against whom a crime, delinquent act, or an attempted crime or delinquent act has been committed;

(ii) who suffers any physical or mental injury as a result of a crime, delinquent act, or an attempted crime or delinquent act;

(iii) who may have been exposed to the HIV/AIDS virus as a result of a crime, delinquent act, or an attempted crime or delinquent act; or

(iv) who suffers any loss of property, including pecuniary loss, as a result of a crime, delinquent act, or an attempted crime or delinquent act.

(B) The term "victim" shall not include any person who committed or aided or abetted in the commission of the crime, delinquent act, or attempted crime or delinquent act.

(42) The term "immediate family member" means:

(A) the person's parent, brother, sister, grandparent, or child, and the spouse of any such parent, brother, sister, grandparent, or child;

(B) any person who maintains or has maintained a romantic relationship, not necessarily including a sexual relationship, with the person; or

(C) any person who has a child in common with the person.

(43) The term "weapons offense" means any violation of any law, rule, or regulation which involves the sale, purchase, transfer in any manner, receipt, acquisition, possession, having under control, use, repair, manufacture, carrying, or transportation of any firearm, ammunition, or destructive device as these terms are defined in section 7-2501.01.

(44) The term "domestic partner" shall have the same meaning as provided in § 32-701(3).

(45) The term "Superior Court" means the Superior Court of the District of Columbia.

(Dec. 23, 1963, 77 Stat. 586, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 523, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title I, § 110(a),

24 DCR 3341; Mar. 12, 1986, D.C. Law 6-90, § 2, 33 DCR 307; Mar. 15, 1990, D.C. Law 8-87, § 4(a), 37 DCR 50; June 8, 1990, D.C. Law 8-134, § 2(a), 37 DCR 2613; Mar. 6, 1991, D.C. Law 8-200, § 2, 37 DCR 7334; Mar. 16, 1995, D.C. Law 10-227, § 3(a), 42 DCR 4; May 23, 1995, D.C. Law 10-257, § 401(e), 42 DCR 53; Apr. 18, 1996, D.C. Law 11-110, § 65, 43 DCR 530; Mar. 24, 1998, D.C. Law 12-81, § 10(u), 45 DCR 745; June 27, 2000, D.C. Law 13-136, § 301(a)(1), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13-277, § 3(a)(1), 48 DCR 2043; Oct. 19, 2002, D.C. Law 14-206, § 3(a), 49 DCR 7815; Mar. 13, 2004, D.C. Law 15-105, § 55, 51 DCR 881; Mar. 17, 2005, D.C. Law 15-261, § 202(a), 52 DCR 1188; Mar. 14, 2007, D.C. Law 16-274, § 2(a), 54 DCR 864; Sept. 12, 2008, D.C. Law 17-231, § 20(g), 55 DCR 6758; Mar. 8, 2011, D.C. Law 18-284, § 3(b), 57 DCR 10477; Sept. 26, 2012, D.C. Law 19-169, § 20(c)(2), 59 DCR 5567.)

Section references. — This section is referenced in § 2-1515.01, § 4-203.01, § 4-1301.02, § 4-1301.06, § 4-1321.02, § 4-1345.01, § 11-721, § 11-1101, § 16-1001, § 16-1005, § 16-2304, § 16-2315, § 16-2316, § 16-2320, § 16-2352, § 16-2382, § 38-2561.03, and § 48-1201.

Effect of amendments.

The 2012 amendment by D.C. Law 19-169 repealed (10) and (11), which formerly read: "(10) The term 'mentally ill child' means a child who is mentally ill within the meaning of section 21-501. (11) The term 'substantially retarded child' means a child who is substantially retarded within the meaning of section 21-1101 et seq."

Legislative history of Law 19-169. — Law 19-169, the "People First Respectful Language Modernization Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-189. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and transmitted to Congress for its review. D.C. Law 19-169 became effective on Sept. 26, 2012.

CASE NOTES

ANALYSIS

Delinquency proceedings.
Education requirement.
Sufficiency of evidence.

Delinquency proceedings.

Trial court, once it had adjudicated juvenile as delinquent for plea involving misdemeanor theft, lacked authority to dismiss proceeding, to vacate delinquency adjudication, or to terminate probation for social reasons; words "at or after" in provision of statute that determinations of whether a child is in need of care or rehabilitation may only be made "at or after" the dispositional hearing could not be read so expansively as to permit dismissal of a petition, effectively infringing on agency director's clear statutory prerogative to control juvenile's term of probation. In re D.M., 47 A.3d 539, 2012 D.C. App. LEXIS 314 (2012).

Education requirement.

Court was not plainly wrong in finding that the oldest child was without education as required by law when he missed so many school days that he was in danger of failing due to absenteeism and when he remained unenrolled in school one month after moving back to the District. Because the focus of the court's inquiry was the child's condition and not the parent's fault, there was no error in the trial court's not crediting the mother's excuses for the child's lack of school attendance and enrollment. In re P.B., 54 A.3d 660, 2012 D.C. App. LEXIS 513 (2012).

Sufficiency of evidence.

Evidence was sufficient to support a finding of neglect, where it showed that the father physically and sexually abused the child, the child was regularly exposed to illegal drug activity in the father's home, the child slept on a sheet in a closet, and the child was found awake at 3:00 a.m. with music blaring in the father's home. In re M.F., 55 A.3d 373, 2012 D.C. App. LEXIS 482 (2012).

Court was not plainly wrong in finding that all three children were without the proper parental care or control necessary for their physical, mental, or emotional health or that the mother suffered from a mental incapacity and that there existed a nexus between her incapacity and an inability to properly care for her children where there was expert testimony and years of evidence. In re P.B., 54 A.3d 660, 2012 D.C. App. LEXIS 513 (2012).

Evidence did not support a finding of neglect as to a mother's children, as the mother's heavy

use of medications to manage her pain did not result in lack of proper parental care and control or an inability to discharge her parental responsibilities due to her physical impairments. In re Ang, 71 A.3d 713, 2013 D.C. App. LEXIS 432 (2013).

Evidence that a mother failed to update her children's immunizations, failed to pay bills, and did not ensure that the children arrived on time for non-mandatory pre-school did not constitute neglect. In re Ang, 71 A.3d 713, 2013 D.C. App. LEXIS 432 (2013).

Evidence was insufficient to support the magistrate's determination that a child was neglected, as there was no evidence of parental abuse or mistreatment, and expert testimony about what "could" happen due to the mother's delusional disorders did not suffice to establish the substantial risk of serious injury necessary to support a finding of neglect based solely on a risk of future harm. In re K.M., 75 A.3d 224, 2013 D.C. App. LEXIS 600 (2013).

LAW REVIEWS AND JOURNAL COMMENTARIES

Domestic Relations, 31 Catholic University Law Review 794.

The Dispositional Phase Of The Juvenile Justice System In The District Of Columbia: The Implications Of In Re A.A.I., 34 Catholic University Law Review 1257.

The Right Of Children In The Juvenile Justice System To Inclusion In The Federally Mandated Child Welfare Services System, 3 The District of Columbia Law Review 311.

§ 16-2305. Petition; contents; amendment.

Section references. — This section is referenced in § 4-1301.09, § 16-2305.02, § 16-2333, § 16-2335, § 16-2335.02, and § 16-2384.

LAW REVIEWS AND JOURNAL COMMENTARIES

The Role Of The Probation Officer In Intake: Stories From Before, During, And After The Delinquency Initial Hearing, 3 The District of Columbia Law Review 235.

§ 16-2309. Taking into custody.

Section references. — This section is referenced in § 4-1301.05, § 4-1301.07, § 4-1303.04, § 16-2306, and § 16-2311.01.

CASE NOTES

Construction.

Although the minor contended that in light of the language in D.C. Code § 38-251 and D.C. Code § 16-2309, the minor was in custody when he was questioned, and that he was therefore subjected to custodial interrogation in contravention of Miranda, the appellate court found that: (1) the use of the word "custody" in the statutes was not designed to differentiate between detention and custody, a distinction that was critical to the analysis under Miranda; and (2) the proper application of Miranda must be determined by constitutional principles rather than by local law. In re A.J., 63 A.3d 562, 2013 D.C. App. LEXIS 94 (2013).

§ 16-2310. Criteria for detaining children.

Section references. — This section is referenced in § 16-2311, § 16-2312, and § 16-2315.

CASE NOTES

Applied in In re D.S., 52 A.3d 887, 2012 D.C. App. LEXIS 481 (2012), substituted opinion at 2012 D.C. App. LEXIS 736 (D.C. Sept. 20, 2012), vacated by 2014 D.C. App. LEXIS 62 (D.C. Mar. 13, 2014).

LAW REVIEWS AND JOURNAL COMMENTARIES

Clear And Convincing Evidence: The Standard Required To Support Pretrial Detention Of Juveniles Pursuant To D.C. Code Section 16-2310, 3 The District of Columbia Law Review 193, 213, 223, 235, 311, 389, 459.

The Unnecessary Detention of Children in the District of Columbia: Symposium. 3 D.C.L.Rev. (1995)

§ 16-2312. Detention or shelter care hearing; intermediate disposition.

Section references. — This section is referenced in § 2-1515.01, § 7-2101, § 16-2305, § 16-2308, § 16-2310, § 16-2312a, and § 16-2328.

CASE NOTES

Applied in In re D.S., 52 A.3d 887, 2012 D.C. App. LEXIS 481 (2012), substituted opinion at 2012 D.C. App. LEXIS 736 (D.C. Sept. 20, 2012), vacated by 2014 D.C. App. LEXIS 62 (D.C. Mar. 13, 2014).

LAW REVIEWS AND JOURNAL COMMENTARIES

Juvenile Detention Law In The District Of Columbia: A Practitioner's Guide, 3 The District of Columbia Law Review 281.

§ 16-2314. Consent decree.

LAW REVIEWS AND JOURNAL COMMENTARIES

The Right Of Children In The Juvenile Justice System To Inclusion In The Federally Mandated Child Welfare Services System, 3 The District of Columbia Law Review 311.

§ 16-2316. Conduct of hearings; evidence.

Section references. — This section is referenced in § 16-2301 and § 16-2310.

CASE NOTES

Due process.

Trial court's decision to change the permanency goal for biological parents' children, who had been adjudicated as neglected, from reunification to adoption was not error, as the parents had sufficient notice of that possibility and a full evidentiary hearing was not required for making such a change. In re Ta.L, 75 A.3d 122, 2013 D.C. App. LEXIS 504 (2013), vacated by 2014 D.C. App. LEXIS 61 (D.C. Jan. 29, 2014).

§ 16-2317. Hearings, findings; dismissal.

Section references. — This section is referenced in § 2-1515.01, § 7-2101, § 16-2319, § 16-2320, § 16-2383, and § 16-2399.

CASE NOTES

ANALYSIS

Dismissal of petition.
Standard of proof.

Dismissal of petition.

Trial court, once it had adjudicated juvenile as delinquent for plea involving misdemeanor theft, lacked authority to dismiss proceeding, to vacate delinquency adjudication, or to terminate probation for social reasons; words "at or after" in provision of statute that determinations of whether a child is in need of care or rehabilitation may only be made "at or after" the dispositional hearing could not be read so expansively as to permit dismissal of a petition, effectively infringing on agency director's clear statutory prerogative to control juvenile's term of probation. In re D.M., 47 A.3d 539, 2012 D.C. App. LEXIS 314 (2012).

Standard of proof.

Absent a showing that a father failed to meet the threshold criteria for custody, the government had to prove by clear and convincing evidence that awarding him custody would be contrary to the children's best interest; the trial court is required to apply the clear-and-convincing-evidence standard before rejecting the custodial preference of a father who has grasped his opportunity interest and is found to be a fit parent. In re D.S., 60 A.3d 1225, 2013 D.C. App. LEXIS 45 (2013), vacated by 2014 D.C. App. LEXIS 62 (D.C. Mar. 13, 2014).

§ 16-2320. Disposition of child who is neglected, delinquent, or in need of supervision.

Section references. — This section is referenced in § 2-1515.05, § 4-342, § 4-1301.09, § 4-1303.05, § 4-1305.02, § 4-1305.06, § 4-1305.08, § 4-1424, § 7-1231.14, § 16-2304, § 16-2319, § 16-2323, § 16-2327, § 16-2331, and § 16-2332.

CASE NOTES

Presumptions and burden of proof.

After the abuse by the unwed biological parent with whom the children were residing led first to their removal from that parent's home, then to the parent's stipulation that the children were neglected, and ultimately to their commitment to the District of Columbia Child and Family Services Agency (CFSA) over the other parent's objections and without any finding that the other parent, who did not live with the first parent, was an unfit parent, the trial court's determination that it was in the children's best interest to be committed to the CFSA for up to two years failed sufficiently to take into account the presumption in the neglect statute, D.C. Code § 16-2320(a), that it was generally preferable to leave a child in the child's own home. In re D.S., 52 A.3d 887, 2012 D.C. App. LEXIS 481 (2012), substituted opinion at 2012 D.C. App. LEXIS 736 (D.C. Sept. 20, 2012), vacated by 2014 D.C. App. LEXIS 62 (D.C. Mar. 13, 2014).

LAW REVIEWS AND JOURNAL COMMENTARIES

Combatting Unnecessary Family Separation: How to Seek Court-Ordered Housing for Families in the District of Columbia Neglect System. Justine A. Dunlap and Kenneth Zimmerman, 2 D.C.L.Rev. 25 (1993).

The Dispositional Phase of the Juvenile Justice System in the District of Columbia: The Implications of In Re A.A.I. 34 Cath.U.L.Rev. 1257 (1985).

§ 16-2321. Disposition of child with mental illness or a substantial intellectual disability.

(a) If no previous examination has been made under section 16-2315 and the Division, after a factfinding but before a dispositional hearing, has reason to believe that a child has a mental illness or a substantial intellectual disability, it may order an examination as provided in section 16-2315.

(b) If as a result of the examination the child is found to have a mental illness or a substantial intellectual disability, the Division may, in lieu of other disposition, direct the appropriate authority to initiate commitment proceedings under Chapter 5 or 11 of Title 21. The Division may order the child detained in suitable facilities pending commitment proceedings.

(c) If the examination does not indicate that commitment proceedings should be initiated or if the proceedings do not result in commitment, the Division shall proceed to disposition pursuant to this subchapter.

(July 29, 1970, 84 Stat. 536, Pub. L. 91-358, title I, § 121(a); Sept. 26, 2012, D.C. Law 19-169, §§ 20(c)(1), 20(c)(3), 59 DCR 5567.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-169 rewrote the section heading, which formerly read: "Disposition of mentally ill or substantially retarded child"; substituted "has a mental illness or a substantial intellectual disability" for "is mentally ill or substantially retarded" in (a); and substituted "have a mental illness or a substantial intellectual disability" for "be mentally ill or substantially retarded" in the first sentence of (b).

Legislative history of Law 19-169. — Law 19-169, the "People First Respectful Language Modernization Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-189. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and transmitted to Congress for its review. D.C. Law 19-169 became effective on Sept. 26, 2012.

Editor's notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

§ 16-2323. Review of dispositional orders.

Section references. — This section is referenced in § 4-1301.09a, § 16-2324, § 16-2389, and § 16-2395.

CASE NOTES

Hearing.

Trial court's decision to change the permanency goal for biological parents' children, who had been adjudicated as neglected, from reunification to adoption was not error, as the parents had sufficient notice of that possibility and a full evidentiary hearing was not required for making such a change. In re Ta.L, 75 A.3d 122, 2013 D.C. App. LEXIS 504 (2013), vacated by 2014 D.C. App. LEXIS 61 (D.C. Jan. 29, 2014).

§ 16-2330. Time computation.

(a) In all proceedings in the Division, time limitations shall be reasonably construed by the Division for the protection of the community and of the child.

(b) The following periods shall be excluded in computing the time limits established for proceedings under this subchapter:

(1) The period of delay resulting from a continuance granted, upon

grounds constituting unusual circumstances, at the request or with the consent, in any case, of the child or his counsel, or, in neglect cases, also of the parent, guardian, or custodian.

(2) The period of delay resulting from other proceedings concerning the child, including but not limited to an examination or hearing on mental health or an intellectual disability and a hearing on a transfer motion.

(3) The period of delay resulting from a continuance granted at the request of the Corporation Counsel if the continuance is granted because of the unavailability of evidence material to the case, when the Corporation Counsel has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date; or if the continuance is granted to allow the Corporation Counsel additional time to prepare his case and additional time is required due to the exceptional circumstances of the case.

(4) The period of delay resulting from the imposition of a consent decree.

(5) The period of delay resulting from the absence or unavailability of the child.

(6) A reasonable period of delay when the child is joined for a hearing with another child as to whom the time for a hearing has not run and there is good cause for not hearing the case separately.

(July 29, 1970, 84 Stat. 539, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341; Sept. 26, 2012, D.C. Law 19-169, § 20(c)(4), 59 DCR 5567.)

Section references. — This section is referenced in § 16-2362.

Effect of amendments. — The 2012 amendment by D.C. Law 19-169 substituted "an intellectual disability" for "retardation" in (b)(2).

Legislative history of Law 19-169. — Law 19-169, the "People First Respectful Language Modernization Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-189. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and transmitted to Congress for its review. D.C. Law 19-169 became effective on Sept. 26, 2012.

Editor's notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

§ 16-2331. Juvenile case records; confidentiality; inspection and disclosure.

(a) For the purposes of this section, the term "juvenile case records" means the following records of a case over which the Family Court has jurisdiction under section 11-1101(13):

(1) Notices filed with the court by an arresting officer pursuant to this subchapter;

(2) The docket of the court and entries therein;

(3) Complaints, petitions, and other legal papers filed in the case;

(4) Transcripts of proceedings before the court;

(5) Findings, verdicts, judgments, orders, and decrees; and

(6) Other writings filed in proceedings before the court, other than social records.

(b) Except as otherwise provided in this section and in section 16-2333.01,

juvenile case records shall be kept confidential and shall not be open to inspection, nor shall information from records inspected be divulged to unauthorized persons.

(c) Subject to the limitations of subsection (f) of this section, the following entities and persons may inspect juvenile case records:

(1) The Courts:

(A) Judges and professional staff of the Superior Court; and

(B) Any court in which the respondent is charged or convicted as a respondent in a delinquency matter, or status offense, or as a defendant in a criminal offense, or the court's probation staff.

(2) Family Court case participants:

(A) The Attorney General and his assistants assigned to the Family Court;

(B) The respondent and any attorney for the respondent without regard to the age of the respondent at the time of the inspection and without regard to the existence of a pending Family Court case;

(C) The parents or guardians and any attorney for them without regard to the age of the respondent at the time of the inspection and without regard to the existence of a pending Family Court case;

(D) Unless the release of the information is otherwise prohibited by law or includes mental health information, each victim, or the immediate family member or custodians of each victim if the victim is a child or is deceased or incapacitated, and their duly authorized attorneys, at the discretion of the Attorney General and when the information relates to:

(i) Release status;

(ii) The level of respondent's placement;

(iii) Stay-away orders imposed;

(iv) Respondent's participation in diversion or a consent decree;

(v) The offenses charged in the petition;

(vi) The terms of any plea agreements, findings, or verdicts related to the adjudication of the case; or

(vii) Commitment or probational status;

(E) Unless the release of information is otherwise prohibited by law or includes mental health information, each eyewitness, or the immediate family members or custodians of each eyewitness if the eyewitness is a child or is deceased or incapacitated, and their duly authorized attorneys, at the discretion of the Attorney General or of the respondent's attorney and when the information relates to:

(i) Release status;

(ii) The level of respondent's placement;

(iii) Stay-away orders imposed;

(iv) Respondent's participation in diversion or a consent decree;

(v) The offenses charged in the petition;

(vi) The terms of any plea agreements, findings, or verdicts related to the adjudication of the case; or

(vii) Commitment or probational status; and

(F) Public or private agencies or institutions providing supervision or

treatment or having custody of the child, if supervision, treatment, or custody is under order of the Family Court;

(3) Other court case participants and law enforcement:

(A) The United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys, or defense attorneys, when necessary for the discharge of their official duties;

(B) Any law enforcement personnel when necessary for the discharge of their official duties;

(C) The Pretrial Services Agency of the District of Columbia when necessary for the discharge of its official duties; and

(D) The Court Services and Offender Supervision Agency for the District of Columbia when necessary for the discharge of its official duties;

(4) Government agencies and entities:

(A) The Mayor in accordance with [§ 50-1403.02];

(B) Authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court, or their families;

(C) The Child Fatality Review Committee for the purposes of examining past events and circumstances surrounding deaths of children in the District of Columbia or of children who are either residents or wards of the District of Columbia, or for the discharge of its official duties;

(D) The Children's Advocacy Center and the public and private agencies and institutions that are members of the multidisciplinary investigation team, for purposes of carrying out their official duties, except that only information contained in the records, and not the records or copies of the records, may be provided pursuant to this subparagraph;

(E) The Child and Family Services Agency, for the purposes of carrying out its official duties; and

(F) The Juvenile Abscondence Review Committee for the purposes of examining circumstances and events surrounding any homicide, assault with intent to kill, and assault with a deadly weapon committed in the District by or to a juvenile in abscondence; and

(5) Other persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or of a member of the respondent's family, or in the work of the Superior Court, if authorized by rule or special order of the court.

(d) The prosecuting attorney inspecting records pursuant to subsection (c)(3)(A) of this section may divulge the contents to the extent required in the prosecution of a criminal case, and the United States Attorney for the District of Columbia and his assistants may inspect a transcript of the testimony of any witness and divulge the contents to the extent required by the prosecution of the witness for perjury, without, wherever possible, naming or otherwise revealing the identity of a child under the jurisdiction of the Family Court.

(e) Notwithstanding subsection (b) of this section, the Family Court, upon application of the Attorney General, may order the release of certain information contained in the case record if:

(1) The respondent has escaped from detention or from the custody of the Department of Youth Rehabilitation Services and is likely to pose a danger or threat of bodily harm to another person;

(2) Release of the information is necessary to protect the public safety and welfare; and

(3) The respondent has been charged with a crime of violence as defined in section 23-1331(4).

(f) Notwithstanding subsections (b) and (c) of this section, the Superior Court may by rule or special order provide that particular items or classes of items in juvenile case records shall not be open to inspection except pursuant to rule or special order; but, in dispositional proceedings after an adjudication, no item considered by the judge (other than identification of the sources of confidential information) shall be withheld from inspection:

(1) In delinquency or need of supervision cases, by the attorney for the child; or

(2) In neglect cases, by the attorney for the child and an attorney for the parent, guardian, or other custodian of the child.

(g) The Superior Court may by rule or special order provide procedures for the inspection or copying of juvenile case records by persons entitled to inspect them. No person receiving any record or information pursuant to this section may publish or use it for any purpose other than that for which it was received without a special order of the court.

(h)(1) Notwithstanding subsection (b) of this section, for every respondent against whom the Office of the Attorney General has filed a petition for the following:

(A) A crime of violence (as defined in section 23-1331(4));

(B) A weapons offense;

(C) Unauthorized use of a vehicle;

(D) Theft in the first degree where the property obtained or used is a motor vehicle (as defined in section 22-3215(a)); or

(E) The Office of the Attorney General has filed 3 or more petitions against the respondent, and the respondent is not detained by the Family Court pursuant to section 16-2313(b)(3), the Family Court shall provide, within 48 hours of the decision not to detain the respondent, the following case record information to the Chief of the Metropolitan Police Department ("Chief"):

(i) Respondent's name and date of birth;

(ii) Last known address of the respondent;

(iii) Last known address of respondent's parents, guardians, caretakers, and custodians;

(iv) Address where the respondent will be placed and the name and address of the person into whose custody the respondent will be placed; and

(v) All terms of the placement or conditions of release.

(2) Notwithstanding subsection (b) of this section, the Family Court shall provide the following case record information to the Chief for all cases in which the respondent is not detained by the Family Court pursuant to section 16-2313(b)(3) and cases in which the respondent is placed on probation pursuant to section 16-2320(c)(3):

(A) Respondent's name and date of birth;

(B) All terms or conditions of any stay-away order; and

(C) All terms or conditions of any curfew order.

(3) The Chief shall utilize information obtained from the Family Court and may disclose such information to law enforcement officers or law enforcement entities only as necessary to preserve public safety or the safety of the respondent. The Chief shall not otherwise disclose this information, except as authorized by this section.

(4) If the Chief discloses information pursuant to paragraph (3) of this subsection, the Chief shall notify the recipient that the information may only be re-disclosed to law enforcement officers and only to the extent necessary to preserve public safety or the safety of the respondent. The Chief shall notify the recipient of the information that any other use or disclosure of the information shall be governed by this section and sections 16-2332 and 16-2333, and that unauthorized re-disclosure may be prosecuted under section 16-2336. Any violation of this paragraph will result in an investigation of the violation by the Inspector General of the District of Columbia.

(5) If the petition filed against the juvenile does not result in disposition, the Family Court, within 48 hours of the entry of the decision by the court to dismiss or close the case, or the withdrawal of the petition by the Office of the Attorney General, shall notify the Chief of the Metropolitan Police Department that the case has not resulted in a disposition. The Chief shall, within 48 hours of the notification, destroy and erase from Metropolitan Police Department files the case record information received from the Family Court pursuant to this subsection and shall notify all parties and agencies to which it transmitted case record information pursuant to paragraph (3) of this subsection that the juvenile's case did not result in a disposition and any information that has been transmitted shall be destroyed and erased.

(i) No person shall disclose, inspect, or use records in violation of this section.

(July 29, 1970, 84 Stat. 539, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341; Mar. 16, 1989, D.C. Law 7-222, § 4, 36 DCR 570; May 15, 1993, D.C. Law 9-272, § 105, 40 DCR 796; Apr. 9, 1997, D.C. Law 11-255, § 18(h), 44 DCR 1271; Mar. 24, 1998, D.C. Law 12-81, § 10(dd), 45 DCR 745; Oct. 3, 2001, D.C. Law 14-28, § 4620(b), 48 DCR 6981; Mar. 17, 2005, D.C. Law 15-261, § 302(a), 52 DCR 1188; Mar. 14, 2007, D.C. Law 16-274, § 2(b), 54 DCR 794; Dec. 4, 2010, D.C. Law 18-273, § 210(a), 57 DCR 7171; Mar. 8, 2011, D.C. Law 18-284, §§ 3(c), 4, 57 DCR 10477; Sept. 26, 2012, D.C. Law 19-171, § 75(a), 59 DCR 6190.)

Section references. — This section is referenced in § 2-1515.06, § 4-1371.06, § 16-1054, § 16-2302, § 16-2316, § 16-2332, § 16-2333.01, § 16-2333.02, § 16-2335, and § 16-2336.

Effect of amendments.

The 2012 amendment by D.C. Law 19-171 made a stylistic change.

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

§ 16-2333. Police and other law enforcement records.

(a) Except as otherwise provided in this section and in section 16-2333.01, law enforcement records and files concerning a child shall not be open to public inspection nor shall their contents or existence be disclosed to the public unless:

(1) A charge of delinquency is transferred for criminal prosecution under section 16-2307;

(1A) The record pertains to a civil Notice of Violation;

(2) The interest of national security requires; or

(3) The court otherwise orders in the interest of the child.

(b) Inspection of such records and files is permitted by:

(1) Courts:

(A) The Superior Court, having the child currently before it in any proceedings; and

(B) Any court in which respondent is charged or convicted as a respondent in a delinquency matter, or status offense, or as a defendant in a criminal offense, or the court's probation staff, or by officials of rehabilitation or penal institutions and other rehabilitation or penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him;

(2) Case participants:

(A) The child and any attorney for the child without regard to the age of the child at the time of the inspection and without regard to the existence of a pending Family Court case;

(B) Parents or guardians of the child and any attorney for them without regard to the age of the child at the time of the inspection and without regard to the existence of a pending Family Court case;

(C) Each eyewitness, victim, or the immediate family members or caretakers of the eyewitness or victim if the eyewitness or victim is a child or is deceased or incapacitated, and their duly authorized attorneys, when the records relate to the incident in which they were an eyewitness or a victim; and

(D) The officers of public and private institutions or agencies to which the child is currently committed, and those professional persons or agencies responsible for the child's supervision after release;

(3) Prosecutors and law enforcement:

(A) Law enforcement officers of the United States, the District of Columbia, and other jurisdictions when necessary for the discharge of their current official duties;

(B) The United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys when necessary for the discharge of their official duties;

(4) Government agencies and entities:

(A) Professional employees of the Department of Youth Rehabilitation Services when necessary for the discharge of their official duties;

(B) The Child Fatality Review Committee when necessary for the discharge of its official duties;

(C) Authorized personnel in the Mayor's Family Court Liaison, the Department of Health, the Department Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court, or their families;

(D) The Children's Advocacy Center and the public and private agencies and institutions that are members of the multi-disciplinary investigation team, for purposes of carrying out their official duties, except that only information contained in the records, and not the records of copies of the records, may be provided pursuant to this subparagraph; and

(E) The Juvenile Abscondence Review Committee for the purposes of examining circumstances and events surrounding any homicide, assault with intent to kill, and assault with a deadly weapon committed in the District by or to a juvenile in abscondence; and

(5) Any other person, agency, or institution, by order of the court, having a professional interest in the child or in the work of the law enforcement department.

(c) The Family Court, upon application of the Attorney General and notice and opportunity for respondent or his counsel to respond to the application, may order the release of certain information contained in the law enforcement records if:

(1) The respondent has escaped from detention or from the custody of the Department of Youth Rehabilitation Services and is likely to pose a danger or threat of bodily harm to another person;

(2) Release of such information is necessary to protect the public safety and welfare; and

(3) The respondent has been charged with a crime of violence as defined in section 23-1331(4).

(d) Photographs may be displayed to potential witnesses for identification purposes, in accordance with the standards of fairness applicable to adults.

(e)(1) Certain juvenile crime information (but not records) shall not be confidential and shall be disclosable to the public strictly in accordance with the provisions of this subsection.

(2) The public availability of the information regarding a child shall be limited to:

(A) The child's name;

(B) The fact that the child was arrested;

(C) The charges at arrest;

(D) The charges in the petition filed pursuant to section 16-2305;

(E) Whether the petition resulted in an adjudication and the charges for which the child was found involved; and

(F) If the child was found involved, whether at initial disposition the child was placed on probation or committed to the custody of the Department of Youth Rehabilitation Services.

(3) The information shall be available only regarding:

(A) A juvenile who has been adjudicated delinquent of a crime of violence (as defined in section 23-1331(4)), or any felony offense under Chapter

45 of Title 22 (weapons) [§ 22-4501 et seq.] or Chapter 23 of Title 6 (Firearms Control) [Chapter 25 of Title 7, § 7-2501.01 et seq. (2001 Ed.)];

(B) A juvenile who has been adjudicated delinquent 2 or more times of:

(i) A dangerous crime (as defined in section 23-1331(3)) that is not included in subparagraph (A) of this paragraph;

(ii) Unauthorized use of a vehicle;

(iii) Theft in the first degree where the property obtained or used is a motor vehicle (as defined in section 22-3215(a));

(iv) A assault [Assault] (as defined in section 22-404(a)(2)); or

(v) Any combination thereof; and

(C) An adult offender (including a juvenile tried as an adult under this chapter) convicted of a felony or of misdemeanor assault; provided, that no more than 3 years have lapsed between the completion of his or her juvenile sentence and the adult conviction.

(4) This subsection permits the limited disclosure of information contained in records and files otherwise protected from disclosure under § 16-2333, but does not authorize disclosure of the records and files.

(5) This subsection shall apply only to individuals adjudicated after January 1, 2011, regardless of when the criminal offense occurred.

(6) Any law enforcement information shared with the public shall comply with Metropolitan Police Regulations that apply to adult criminal records, including the Duncan Ordinance (Chapter 10 of Title 1 of the District of Columbia Municipal Regulations).".

(f) Notwithstanding the confidentiality requirements of subsection (b) of this section, the Metropolitan Police Department shall make reports available to the public every 6 months of the number of children arrested in the District by the location of the police service area within which the juvenile suspect lives, and giving the location of the police service area within which the crime occurred, the charges, and the date of the crime.

(g) No person shall disclose, inspect, or use records in violation of this section.

(July 29, 1970, 84 Stat. 541, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title I, § 110(h), title IV, § 408(a), 24 DCR 3341; Oct. 3, 2001, D.C. Law 14-28, § 4620(d), 48 DCR 6981; Mar. 13, 2004, D.C. Law 15-105, § 10(d), 51 DCR 881; Mar. 17, 2005, D.C. Law 15-261, § 302(c), 52 DCR 1188; Dec. 4, 2010, D.C. Law 18-273, § 210(c), 57 DCR 7171; Mar. 8, 2011, D.C. Law 18-284, §§ 3(e), 4, 57 DCR 10477; June 3, 2011, D.C. Law 18-377, § 6(b), 58 DCR 1174; Sept. 26, 2012, D.C. Law 19-171, § 53(c), 59 DCR 6190.)

Section references. — This section is referenced in § 2-1515.06, § 4-1371.06, § 16-1054, § 16-2316, § 16-2331, § 16-2332, § 16-2333.01, § 16-2333.02, § 16-2335, § 16-2363, § 16-2393, and § 48-1203.

Effect of amendments.

The 2012 amendment by D.C. Law 19-171 made a stylistic change in former (b)(10A).

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

§ 16-2336. Unlawful disclosure of records; penalties.

Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of sections 16-2331 through 16-2335, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined of not more than the amount set forth in [§ 22-3571.01] or imprisoned not more than ninety days, or both. Violations of this section shall be prosecuted by the Corporation Counsel in the name of the District of Columbia.

(July 29, 1970, 84 Stat. 543, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341; Apr. 30, 1988, D.C. Law 7-104, § 4(q), 35 DCR 147; June 11, 2013, D.C. Law 19-317, § 281(c), 60 DCR 2064.)

Section references. — This section is referenced in § 16-2316, § 16-2331, and § 16-2332.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "of not more than the amount set forth in [§ 22-3571.01]" for "not more than $250".

Emergency legislation. — For temporary (90 days) amendment of this section, see § 281(c) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter II. Parentage Proceedings.

§ 16-2343. Tests to establish parentage.

LAW REVIEWS AND JOURNAL COMMENTARIES

Cutchember v. Payne: Approaching Perfection In Paternity Testing, 34 Catholic University Law Review 227.

§ 16-2348. Parentage records; confidentiality; inspection and disclosure.

(a) Except on order of the Family Division, no records in a case over which the Division has jurisdiction under section 11-1101(11) shall be open to inspection by anyone other than the plaintiff, respondent, their attorneys of record, the IV-D agency, or authorized professional staff of the Superior Court. Any inspection shall be subject to the safeguards provided by section 16-925. The Family Division, upon proper showing, may authorize the furnishing of certified copies of the records or portions thereof to the respondent, the other parent, or custodian of the child, a party in interest, or their duly authorized attorneys. Certified copies of the records or portions thereof may be furnished, upon request, to the IV-D agency and the Corporation Counsel for use as evidence in nonsupport proceedings and to the Registrar as provided by section 16-2346(a).

(b) No person shall disclose, receive, or use records in violation of this section. Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information in violation of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned not more than ninety days, or both. Violations of this section shall be prosecuted by the Corporation Counsel in the name of the District of Columbia.

(Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 545, Pub. L. 91-358, title I, § 121(a); Oct. 1, 1976, D.C. Law 1-87, § 20(g), 23 DCR 2544; Oct. 8, 1981, D.C. Law 4-34, § 29(a), 28 DCR 3271; Apr. 30, 1988, D.C. Law 7-104, § 4(s), 35 DCR 147; Apr. 3, 2001, D.C. Law 13-269, § 106(r), 48 DCR 1270; June 11, 2013, D.C. Law 19-317, § 281(d), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than $250" in (b).

Emergency legislation.

For temporary (90 days) amendment of this section, see § 281(d) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 16-2336.

Editor's notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter III. Proceedings Regarding the Termination of Parental Rights of Certain Neglected Children.

§ 16-2353. Grounds for termination of parent and child relationship.

CASE NOTES

Adoption proceedings.

Birth father withholding his consent to adoption was contrary to a three-year-old child's best interest because the father had not been significantly involved in the child's life since birth and was unable to provide stability and permanence for the child, the father had significant unmet mental health needs, a gambling addiction, domestic violence issues, a criminal history, and paid little child support, and the child called the step-father "daddy." In re J.C.F., 73 A.3d 1007, 2013 D.C. App. LEXIS 502 (2013).

Applied in In re D.S., 52 A.3d 887, 2012 D.C. App. LEXIS 481 (2012), substituted opinion at 2012 D.C. App. LEXIS 736 (D.C. Sept. 20, 2012), vacated by 2014 D.C. App. LEXIS 62 (D.C. Mar. 13, 2014).

§ 16-2364. Unlawful disclosure.

Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of section 16-2363 of this subchapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than ninety (90) days, or both. A violation of this section shall be prosecuted by the Corporation Counsel of the District of Columbia.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341; June 11, 2013, D.C. Law 19-317, § 281(e), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than two hundred and fifty dollars ($250)".

Emergency legislation. — For temporary (90 days) amendment of this section, see § 281(e) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 16-2336.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 16-2365. Termination decrees of other jurisdictions.

LAW REVIEWS AND JOURNAL COMMENTARIES

Domestic Relations, 31 Catholic University Law Review 794.

Subchapter V. Permanent Guardianship.

§ 16-2394. Unlawful disclosure.

Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of section 16-2393 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than 90 days, or both. A violation of this section shall be prosecuted by the Corporation Counsel of the District of Columbia.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637; June 11, 2013, D.C. Law 19-317, § 281(f), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than $250".

Emergency legislation.

For temporary (90 days) amendment of this section, see § 281(f) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 16-2336.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 16-2399. Permanent guardianship subsidy.

(a) To the extent that appropriated funds are available, the Mayor may make subsidy payments to a permanent guardian, irrespective of the permanent guardian's state of residence, as needed on behalf of a child with special needs where the permanent guardian has the capability of providing the permanent family relationships needed by such child in all areas except financial, as determined by the Mayor. For the purposes of this section a "child with special needs" includes any child who is difficult to place in adoption because of age, race, ethnic background, physical or mental condition, or membership in a sibling group which should be placed together, or a child who, in all likelihood, would go without another permanent placement arrangement

except for the acceptance of the child as a member of the permanent guardian's family.

(b) For a permanent guardian to be eligible for subsidy payments under this section:

(1) The child must be adjudicated neglected pursuant to section 16-2317;

(2) The child must be committed to the legal custody of the Child and Family Services Agency;

(3) Repealed; and

(4) A subsidy payment agreement must be entered into by the Child and Family Services Agency and the permanent guardian.

(c) Subsidy payments allowed under this section may be paid, subject to the availability of appropriated funds necessary to carry out the provisions of this section, on a long-term basis to help a permanent guardian whose income is limited and likely to remain so, or on a time-limited basis to help a permanent guardian meet the cost of integrating a child into the family over a specified period of time.

(d)(1) Except as provided in paragraph (2) of this subsection, eligibility for subsidy payments under this section may continue during the period of the guardianship order until the child reaches 18 years of age.

(2) For guardianships that are finalized on or after May 7, 2010, eligibility for subsidy payments under this section shall continue during the period of the guardianship order until the child reaches 21 years of age.

(e) No subsidy payment to a permanent guardian shall be made on behalf of any child with respect to whom a guardianship order has been entered by the Superior Court of the District of Columbia, pursuant to this subchapter, before October 1, 2000.

(f) Once during each calendar year and at other times during the year when changed conditions and costs are deemed by the Mayor to warrant review, the Mayor shall review the need for continuing each permanent guardianship subsidy. A permanent guardian who is subject to a subsidy agreement under this section may request, in writing, at any time, for reasons set forth in the request, a review of the amount of the payment or the level of continuing payments. Such review shall begin not later than 30 days from the receipt of the request by the Mayor. At the time of a review, appropriate adjustments in payment shall be made based upon changes in the needs of the child. Any adjustment may be made retroactive to the date a request for review was received by the Mayor. If a request for review is not acted on within 30 days after it has been received by the Mayor, or if the Mayor modifies or terminates an agreement without the concurrence of all parties, any party to the agreement shall be entitled to a hearing under the applicable provisions of subchapter I of Chapter 5 of Title 2.

(g) The Mayor shall disseminate information to prospective permanent guardians as to eligibility for subsidy under this section.

(h) The Mayor shall keep such records as are necessary to evaluate the effectiveness of permanent guardianship subsidies as a means of encouraging and promoting the placement of children with special needs with permanent guardians. The Mayor shall make an annual progress report which shall be

open to public inspection. The report shall include the number of children placed with permanent guardians under subsidy payment agreements during the year preceding the annual report and the major characteristics of the children placed.

(i) Permanent guardianship subsidies shall be subject to the availability of appropriations. Nothing in this section shall be construed to create an entitlement to a permanent guardianship subsidy for any person.

(j) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issues rules to implement the provisions of this section.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637; Oct. 26, 2001, D.C. Law 14-42, § 5, 48 DCR 7612; Sept. 24, 2010, D.C. Law 18-230, § 502(b), 57 DCR 6951; Sept. 26, 2012, D.C. Law 19-171, § 75(b), 59 DCR 6190.)

Section references. — This section is referenced in § 4-1301.02.

Effect of amendments.

The 2012 amendment by D.C. Law 19-171 deleted "and" at the end of (b)(2).

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

Editor's notes. — Based on the text, the reference in D.C. Law 19-171, § 75(b) to § 16-2390 should have been to § 16-2399; therefore, the changes enacted by the law have been applied to that code section.

Chapter 25. Change of Name or Gender.

Sec.
16-2502. Notice; contents. [Repealed].
Sec.
16-2503. Decree.

§ 16-2501. Application; persons who may file.

Legislative history of Law 20-37. — Law 20-37, the "JaParker Deoni Jones Birth Certificate Equality Amendment Act of 2013," was introduced in Council and assigned Bill No. 20-142. The Bill was adopted on first and second readings on June 26, 2013, and July 10, 2013, respectively. Signed by the Mayor on August 6, 2013, it was assigned Act No. 20-153 and transmitted to Congress for its review. D.C. Law 20-37 became effective on November 5, 2013.

Editor's notes. — D.C. Law 20-37 added "or Gender" at the end of the chapter heading.

§ 16-2502. Notice; contents. [Repealed].

[Repealed].

(Dec. 23, 1963, 77 Stat. 595, Pub. L. 88-241, § 1; Nov. 5, 2013, D.C. Law 20-37, § 3(b), 60 DCR 12145.)

Legislative history of Law 20-37. — See note to § 16-2501.

§ 16-2503. Decree.

(a) Upon a showing that the court deems satisfactory, the court may change the name of the applicant according to the prayer of the application.

(b)(1) Any District resident may seek a declaration by the Superior Court reflecting a change of gender. The Superior Court shall grant the declaration if the individual seeking the declaration provides, to the court, a statement from the individual's healthcare provider as described in § 7-210.01(a)(2). If granted, the declaration shall be effective from the date of gender transition as specified in the healthcare provider's statement.

(2) Any District resident who was born in a state or foreign jurisdiction that requires a court order to amend a birth certificate to reflect a change in gender may request a court order by the Superior Court directing the birth state or foreign jurisdiction to amend the original birth certificate or issue a new birth certificate reflecting a change of gender. The Superior Court shall grant the order if the individual seeking the order provides, to the court, a statement from the individual's healthcare provider as described in § 7-210.01(a)(2).

(3) Any declaration or order issued pursuant to subsection (b) this section shall constitute conclusive proof of the individual's gender for all purposes and shall be given the full force and effect of any judgment issued by the Superior Court.

(Dec. 23, 1963, 77 Stat. 595, Pub. L. 88-241, § 1; Nov. 5, 2013, D.C. Law 20-37, § 3(c), 60 DCR 12145.)

Effect of amendments. — The 2013 amendment by D.C. Law 20-37 deleted "On proof of the notice prescribed by section 16-2502, and" from the beginning; added the subsection (a) designation; and added (b).

Legislative history of Law 20-37. — See note to § 16-2501.

CHAPTER 27. NEGLIGENCE CAUSING DEATH.

Sec.
16-2702. Party plaintiff; statute of limitations.

§ 16-2701. Liability; damages; prior recovery as precluding action.

CASE NOTES

ANALYSIS

Construction and application.
Construction with other law.
Persons entitled to sue.

Construction and application.

District's motion to dismiss plaintiff's wrongful death and survival act claims was granted; the wrongful death act and survival claims statute did not provide any substantive rights, but simply established the procedural methods for filing suit. Buruca v. District of Columbia, 902 F. Supp. 2d 75, 2012 U.S. Dist. LEXIS 158587 (D.D.C. Nov. 6, 2012).

Construction with other law.

The survival act (D.C. Code § 12-101) proceeds upon a different theory and foundation from a wrongful death act (D.C. Code § 16-

2701) case. It recognizes that liability to the victim should not be extinguished by the fortuitous event of death; the action provided for by the survival statute, therefore, does not arise from the death but from the injury itself. Flythe v. District of Columbia, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 160025 (D.D.C. Nov. 8, 2013), amended by 2014 U.S. Dist. LEXIS 29401 (D.D.C. Mar. 7, 2014).

Persons entitled to sue.

Estate could not maintain a wrongful death action against a police officer because the officer's actions did not cause the decedent's death: the wrongful act upon which liability is premised must result in death before recovery may be had. Flythe v. District of Columbia, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 160025 (D.D.C. Nov. 8, 2013), amended by 2014 U.S. Dist. LEXIS 29401 (D.D.C. Mar. 7, 2014).

LAW REVIEWS AND JOURNAL COMMENTARIES

What About the Children? Toward an Expansion of Loss of Consortium Recovery in the District of Columbia. Maureen Ann Delaney, 41 Am.U.L.Rev. 107, (1991).

§ 16-2702. Party plaintiff; statute of limitations.

An action pursuant to this chapter shall be brought by and in the name of the personal representative of the deceased person, and within 2 years after the death of the person injured.

(Dec. 23, 1963, 77 Stat. 596, Pub. L. 88-241, § 1; Oct. 22, 2012, D.C. Law 19-177, § 3, 59 DCR 9353.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-177 substituted "2 years" for "one year."

Temporary Amendment of Section. — Section 2 of D.C. Law 19-147 substituted "2 years" for "one year".

Section 4(b) of D.C. Law 19-147 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation.

For temporary (90 day) amendment of section, see § 2 of the Wrongful Death Congressional Review Emergency Act of 2012 (D.C. Act 19-390, July 9, 2012, 59 DCR 8499).

Legislative history of Law 19-177. — Law 19-177, the "Wrongful Death Act of 2012," was introduced in Council and assigned Bill No. 19-717. The Bill was adopted on first and second readings on June 26, 2012, and July 10, 2012, respectively. Signed by the Mayor on July 25, 2012, it was assigned Act No. 19-416 and transmitted to Congress for its review. D.C. Law 19-177 became effective on Oct. 22, 2012.

LAW REVIEWS AND JOURNAL COMMENTARIES

Estate of Chappelle v. Sanders: Due Diligence Confusion Continues. 32 Cath.U.L.Rev., 966, (1983).

Chapter 28. Medical Malpractice.

Subchapter I. Generally.

§ 16-2802. Notice of intention to file suit.

Section references. — This section is referenced in § 16-2803 and § 16-2804.

CASE NOTES

ANALYSIS

Construction with federal law.
Waiver.

Construction with federal law.

Retired Major General satisfied the 90-day notice of claim requirement of the District of Columbia Medical Malpractice Proceedings Act (MMPA), as required to bring Federal Tort Claims Act (FTCA) claim of medical malpractice against the United States in the District of Columbia, by complying with FTCA exhaustion requirements and Army regulations governing tort claims; Major General had notified the Army that he suffered from urinary incontinence and impotence allegedly as a result of negligent medical care provided by government health care providers at Army hospital and that he was seeking $2,000,000 from the United States for his injuries, he also submitted expert report in addition to these allegations, and as a result the government anticipated that the claim could lead to an action under the FTCA in federal court. Brashear v. United States, 847 F.Supp.2d 41, 2012 U.S. Dist. LEXIS 31466 (2012).

Waiver.

Trial court has authority to waive the notice requirement in a medical malpractice action "in the interests of justice"; waiver of the notice requirement in a patient's medical malpractice action against a hospital was in the interests of justice because the patient failed to provide the 90-day notice due to ignorance of the requirement, the hospital did not claim any prejudice from the lack of notice, and the patient would be prejudiced by dismissal due to the running of the statute of limitations. Lewis v. Wash. Hosp. Ctr., 77 A.3d 378, 2013 D.C. App. LEXIS 646 (2013).

§ 16-2804. Unknown defendant or unlicensed defendant.

CASE NOTES

Waiver of notice.

Trial court has authority to waive the notice requirement in a medical malpractice action "in the interests of justice"; waiver of the notice requirement in a patient's medical malpractice action against a hospital was in the interests of justice because the patient failed to provide the 90-day notice due to ignorance of the requirement, the hospital did not claim any prejudice from the lack of notice, and the patient would be prejudiced by dismissal due to the running of the statute of limitations. Lewis v. Wash. Hosp. Ctr., 77 A.3d 378, 2013 D.C. App. LEXIS 646 (2013).

CHAPTER 40. COLLABORATIVE LAW; UNIFORM ACT.

Sec.
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§ 16-4001. Short title.

This chapter may be cited as the "Uniform Collaborative Law Act".

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Legislative history of Law 19-125. — Law 19-125, the "Uniform Collaborative Law Act of 2012", was introduced in Council and assigned Bill No. 19-43, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 2012, and February 7, 2012, respectively. Signed by the Mayor on March 1, 2012, it was assigned Act No. 19-319 and transmitted to both Houses of Congress for its review. D.C. Law 19-125 became effective on May 9, 2012.

§ 16-4002. Definitions.

For the purposes of this chapter, the term

(1) "Collaborative law communication" means a statement, whether oral or in a record, or verbal or nonverbal, that:

(A) Is made to conduct, participate in, continue, or reconvene a collaborative law process; and

(B) Occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.

(2) "Collaborative law participation agreement" means an agreement by persons to participate in a collaborative law process.

(3) "Collaborative law process" means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons:

(A) Sign a collaborative law participation agreement; and

(B) Are represented by collaborative lawyers.

(4) "Collaborative lawyer" means a lawyer who represents a party in a collaborative law process.

(5) "Collaborative matter" means a dispute, transaction, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding, which is described in a collaborative law participation agreement and arises under the family or domestic relations law of the District of Columbia, including:

(A) Marriage, divorce, dissolution, annulment, and property distribution;

(B) Child custody, visitation, and parenting time;

(C) Alimony, maintenance, and child support;

(D) Adoption;

(E) Parentage; and

(F) Premarital, marital, and post-marital agreements.

(6) "Family member" means a person:

(A) With whom an individual shares or has shared a mutual residence; or

(B) Who is related to an individual by blood, adoption, or legal custody; or

(C) Who is or was married to, in a domestic partnership with, divorced or separated from, or in a romantic, dating, or sexual relationship with an individual.

(7) "Law firm" means:

(A) Lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and

(B) Lawyers employed in a legal services organization, or the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

(8) "Nonparty participant" means a person, other than a party and the party's collaborative lawyer, that participates in a collaborative law process.

(9) "Party" means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(10) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) "Proceeding" means a proceeding before a tribunal, including related prehearing and post-hearing motions, conferences, and discovery.

(12) "Prospective party" means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.

(13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) "Related to a collaborative matter" means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

(15) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

(16) "Tribunal" means a court, administrative agency, or other body acting in an adjudicative capacity that, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4003. Applicability.

This chapter applies to a collaborative law participation agreement that meets the requirements of § 16-4004 signed on or after the effective date of this chapter [May 9, 2012].

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4004. Collaborative law participation agreement; requirements.

(a) A collaborative law participation agreement shall:

(1) Be in a record;

(2) Be signed by the parties;

(3) State the parties' intention to resolve a collaborative matter through a collaborative law process under this chapter;

(4) Describe the nature and scope of the matter;

(5) Identify the collaborative lawyer who represents each party in the process; and

(6) Contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process.

(b) The parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this chapter.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Section references. — This section is referenced in § 16-4003 and § 16-4020.

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4005. Beginning and concluding collaborative law process.

(a) A collaborative law process begins when the parties sign a collaborative law participation agreement.

(b) The tribunal may not order a party to participate in a collaborative law process over that party's objection.

(c) A collaborative law process is concluded by:

(1) The resolution of a collaborative matter as evidenced by a signed record;

(2) The resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or

(3) The termination of the process.

(d) A collaborative law process terminates:

(1) When a party gives notice to other parties in a record that the process is ended; or

(2) When a party:

(A) Begins a proceeding related to a collaborative matter without the agreement of all parties; or

(B) In a pending proceeding related to the matter:

(i) Initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;

(ii) Requests that the proceeding be put on the tribunal's calendar; or

(iii) Takes similar action requiring notice to be sent to the parties; or

(3) Except as otherwise provided by subsection (g) of this section, when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

(e) A party's collaborative lawyer shall give prompt notice to all parties in a record of a discharge or withdrawal.

(f) A party may terminate a collaborative law process with or without cause.

(g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues, if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (e) of this section is sent to the parties:

(1) The unrepresented party engages a successor collaborative lawyer; and

(2) In a signed record:

(A) The parties consent to continue the process by reaffirming the collaborative law participation agreement;

(B) The agreement is amended to identify the successor collaborative lawyer; and

(C) The successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

(h) A collaborative law process does not conclude if, with the consent of the parties, a party requests the tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.

(i) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4006. Proceedings pending before tribunal; status report.

(a) Persons in a proceeding pending before the tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the agreement after it is signed. Subject to subsection (c) of this section and §§ 16-4007 and 16-4008, the filing operates as an application for a stay of the proceeding.

(b) The parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes. The stay of the proceeding under subsection (a) of this section is lifted when the notice is filed. The notice may not specify any reason for termination of the process.

(c) The tribunal in which a proceeding is stayed under subsection (a) of this section may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It

may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.

(d) The tribunal may not consider a communication made in violation of subsection (c) of this section.

(e) The court shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4007. Emergency order.

During a collaborative law process, the tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party, family member, or other person, in accordance with subchapter I of Chapter 10 of this title.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Section references. — This section is referenced in § 16-4006.

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4008. Approval of agreement by tribunal.

The tribunal may approve an agreement resulting from a collaborative law process.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Section references. — This section is referenced in § 16-4006.

§ 16-4009. Disqualification of collaborative lawyer and lawyers in associated law firm.

(a) Except as otherwise provided in subsection (c) of this section, a collaborative lawyer is disqualified from appearing before the tribunal to represent a party in a proceeding related to the collaborative matter.

(b) Except as otherwise provided in subsection (c) of this section and §§ 16-4010 and 16-4011, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before the tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a) of this section.

(c) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

(1) To ask the tribunal to approve an agreement resulting from the collaborative law process; or

(2) To seek or defend an emergency order to protect the health, safety, welfare, or interest of a party, family member, or other person, in accordance with subchapter I of Chapter 10 of this title, if a successor lawyer is not immediately available to represent that person.

(d) If subsection (c)(2) of this section applies, a collaborative lawyer, or lawyer in a law firm with which the collaborative lawyer is associated, may represent a party or family member only until that person is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of the person.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Section references. — This section is referenced in § 16-4010, § 16-4011, § 16-4014, and § 16-4020.

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4010. Low-income parties.

(a) The disqualification of § 16-4009(a) applies to a collaborative lawyer representing a party with or without fee.

(b) After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under § 16-4009(a) is associated may represent a party without fee in the collaborative matter or a matter related to the collaborative matter if:

(1) The party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;

(2) The collaborative law participation agreement so provides; and

(3) The collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm that are reasonably calculated to isolate the collaborative lawyer from such participation.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Section references. — This section is referenced in § 16-4009, § 16-4014, and § 16-4020.

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4011. Governmental entity as party.

(a) The disqualification of § 16-4009(a) applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.

(b) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if:

(1) The collaborative law participation agreement so provides; and

(2) The collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm that are reasonably calculated to isolate the collaborative lawyer from such-participation.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Section references. — This section is referenced in § 16-4009, § 16-4014, and § 16-4020.

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4012. Disclosure of information.

Except as provided by law other than this chapter, during the collaborative law process, upon the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party also shall update promptly previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative law process.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4013. Standards of professional responsibility and mandatory reporting not affected.

This chapter does not affect:

(1) The professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or

(2) The obligation of a person to report abuse, neglect, abandonment, or exploitation of a child or adult under the law of the District of Columbia.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4014. Appropriateness of collaborative law process.

Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

(1) Assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;

(2) Provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available

alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation; and

(3) Advise the prospective party that:

(A) If, after signing an agreement, a party initiates a proceeding or seeks intervention by the tribunal in a pending proceeding related to the collaborative matter, the collaborative law process terminates;

(B) Participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and

(C) The collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before the tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by § 16-4009(c), § 16-4010(b), or § 16-4011(b).

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Section references. — This section is referenced in § 16-4020.

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4015. Coercive or violent relationship.

(a) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a coercive or violent relationship with another prospective party.

(b) Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.

(c) If a collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer may not begin or continue a collaborative law process unless:

(1) The party or the prospective party requests beginning or continuing the process; and

(2) The collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during the process.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Section references. — This section is referenced in § 16-4020.

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4016. Confidentiality of collaborative law communication.

A collaborative law communication is confidential to the extent agreed by the parties in a signed record or as provided by law of the District of Columbia other than this chapter.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4017. Privilege against disclosure for collaborative law communication; admissibility; discovery.

(a) Subject to §§ 16-4018 and 16-4019, a collaborative law communication is privileged under subsection (b) of this section, is not subject to discovery, and is not admissible as evidence.

(b) In a proceeding, the following privileges apply:

(1) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication.

(2) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Section references. — This section is referenced in § 16-4018, § 16-4019, and § 16-4020.

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4018. Waiver and preclusion of privilege.

(a) A privilege under § 16-4017 may be waived in a record or orally during a proceeding if it is expressly waived by all parties entitled to claim the privilege at issue and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

(b) A person that makes a disclosure or representation about a collaborative law communication that prejudices another person in a proceeding may not assert a privilege under § 16-4017, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Section references. — This section is referenced in § 16-4017.

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4019. Limits of privilege.

(a) There is no privilege under § 16-4017 for a collaborative law communication that is:

(1) Available to the public under the District of Columbia Public Records Management Act of 1985, effective September 5, 1985 (D.C. Law 6-19; D.C.

Official Code § 2-1701 et seq.), or made during a session of a collaborative law process that is open, or is required by law to be open, to the public;

(2) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(3) Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity;

(4) In an agreement resulting from the collaborative law process evidenced by a record signed by all parties to the agreement; or

(5) A disclosure in a report of suspected domestic violence to an appropriate agency under subchapter I of Chapter 10 of this title.

(b) The privileges under § 16-4017 for a collaborative law communication do not apply to the extent that a communication is:

(1) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process; or

(2) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, unless the District of Columbia is a party to or otherwise participates in the process.

(c) There is no privilege under § 16-4017 if the tribunal finds, after a hearing *in camera*, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in:

(1) A judicial proceeding involving a felony or misdemeanor; or

(2) A proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense to avoid liability on the contract is asserted.

(d) If a collaborative law communication is subject to an exception under subsection (b) or (c) of this section, only the part of the communication necessary for the application of the exception may be disclosed or admitted.

(e) Disclosure or admission of evidence excepted from the privilege under subsection (b) or (c) of this section does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(f) The privileges under § 16-4017 do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection shall not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the communication was made.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Section references. — This section is referenced in § 16-4017.

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4020. Authority of tribunal in case of noncompliance.

(a) If an agreement fails to meet the requirements of § 16-4004, or a lawyer fails to comply with § 16-4014 or § 16-4015, the tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they:

(1) Signed a record indicating an intention to enter into a collaborative law participation agreement; and

(2) Reasonably believed they were participating in a collaborative law process.

(b) If the tribunal makes the findings specified in subsection (a) of this section, and the interests of justice require, the tribunal may:

(1) Enforce an agreement evidenced by a record resulting from the process in which the parties participated;

(2) Apply the disqualification provisions of §§ 16-4009, 16-4010, and 16-4011; and

(3) Apply a privilege under § 16-4017.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4021. Uniformity of application and construction.

In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

§ 16-4022. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)), or authorize electronic delivery of any of the notices described in § 103(b) of that act (15 U.S.C. § 7003(b)).

(May 9, 2012, D.C. Law 19-125, § 2(b), 59 DCR 1928.)

Legislative history of Law 19-125. — For history of Law 19-125, see notes under § 16-4001.

CHAPTER 44. ARBITRATION; REVISED UNIFORM ACT.

§ 16-4401. Definitions.

CASE NOTES

Applied in Wash. Teachers' Union v. D.C. Pub. Schs., 77 A.3d 441, 2013 D.C. App. LEXIS 665 (2013).

§ 16-4403. When chapter applies.

Section references. — This section is referenced in § 16-4404 and § 16-4432.

CASE NOTES

Applied in Wash. Teachers' Union v. D.C. Pub. Schs., 77 A.3d 441, 2013 D.C. App. LEXIS 665 (2013).

§ 16-4406. Validity of agreement to arbitrate.

Section references. — This section is referenced in § 16-4404.

CASE NOTES

ANALYSIS

Construction with federal law.
Jurisdiction.

Construction with federal law.

Federal court decisions construing and applying the Federal Arbitration Act may be regarded as persuasive authority in construing and applying the corresponding provisions of the District of Columbia Arbitration Act, so long as there is no material difference in the statutory language between the two acts. Giron v. Dodds, 35 A.3d 433, 2012 D.C. App. LEXIS 2 (2012).

Jurisdiction.

Superior Court of the District of Columbia had jurisdiction to grant a stay of arbitration because the District of Columbia Comprehensive Merit Personnel Act, D.C. Code §§ 1-601.01 to 1-636.03, did not preempt the District of Columbia Revised Uniform Arbitration Act, D.C. Code §§ 16-4401 to 16-4432 (2012), as to this type of pre-arbitration relief. Wash. Teachers' Union v. D.C. Pub. Schs., 77 A.3d 441, 2013 D.C. App. LEXIS 665 (2013).

§ 16-4407. Motion to compel or stay arbitration.

Section references. — This section is referenced in § 16-4404.

CASE NOTES

Jurisdiction.

Trial court had jurisdiction over motions to stay arbitration because the Comprehensive Merit Personnel Act did not preempt the provision of the Revised Uniform Arbitration Act that provided for a pre-arbitration motion to stay. District of Columbia v. Am. Fedn. of State, 81 A.3d 299, 2013 D.C. App. LEXIS 695 (2013).

Superior Court of the District of Columbia had jurisdiction to grant a stay of arbitration because the District of Columbia Comprehensive Merit Personnel Act, D.C. Code §§ 1-601.01 to 1-636.03, did not preempt the District of Columbia Revised Uniform Arbitration Act, D.C. Code §§ 16-4401 to 16-4432 (2012), as to this type of pre-arbitration relief. Wash. Teach-

ers' Union v. D.C. Pub. Schs., 77 A.3d 441, 2013 D.C. App. LEXIS 665 (2013).

§ 16-4423. Vacating award.

Section references. — This section is referenced in § 16-4404, § 16-4412, § 16-4414, § 16-4418, § 16-4420, § 16-4421, § 16-4422, § 16-4424, and § 16-4425.

CASE NOTES

ANALYSIS

Authority of arbitrator.
Review.

Authority of arbitrator.

In arbitration pertaining to the allocation of attorneys' fees awarded after settlement in a California class action lawsuit, an arbitrator did not exceed his powers under the Federal Arbitration Act and the District of Columbia Revised Uniform Arbitration Act because the arbitrator squarely centered the arbitration decision on the meaning of key paragraphs in the parties' agreements, which controlled the content of the attorney fee petition submitted to the California court. Wolf v. Sprenger + Lang, PLLC, 70 A.3d 225, 2013 D.C. App. LEXIS 393 (2013), opinion replaced by 2013 D.C. App. LEXIS 883 (D.C. July 11, 2013).

Arbitrator did not exceed the scope of his powers because the arbitrator did not stray from interpretation and application of the agreement and amended agreement such that his decision was unenforceable, the parties bargained for the arbitrator's construction of their agreements, and the arbitrator's decision arguably construed or applied the contracts. Wolf v. Sprenger + Lang, PLLC, — A.3d —, 2013 D.C. App. LEXIS 883 (July 11, 2013).

Arbitrator did not engage in misconduct because the record was devoid of any action on the part of the arbitrator that so affected the rights of the attorney that it could have been said that he was deprived of a fair hearing because the arbitrator considered the fee petition filed in the California trial court, as well as the basis for that petition as set forth in the parties' co-counsel agreements, and in construing the pertinent provisions of the co-counsel agreements, the arbitrator specifically sought the views of the parties. Wolf v. Sprenger + Lang, PLLC, — A.3d —, 2013 D.C. App. LEXIS 883 (July 11, 2013).

Review.

Client's bare allegations were contested and insufficient to prove a statutory basis for vacating an arbitration award because the agreement to arbitrate expressly provided that the arbitration award was binding on both parties and that there was only a limited right of appeal; by signing the agreement, the client agreed to the rules of the District of Columbia Bar Attorney-Client Arbitration Board and waived her right to challenge its decision on any grounds that required a transcript. Zegeye v. Liss, 70 A.3d 1208, 2013 D.C. App. LEXIS 408 (2013).

Applied in Adkins L.P. v. O St. Mgmt., LLC, 56 A.3d 1159, 2012 D.C. App. LEXIS 505 (2012), writ of certiorari denied by 133 S. Ct. 2752, 186 L. Ed. 2d 194, 2013 U.S. LEXIS 4016, 81 U.S.L.W. 3658 (U.S. 2013); Wash. Teachers' Union v. D.C. Pub. Schs., 77 A.3d 441, 2013 D.C. App. LEXIS 665 (2013).

§ 16-4427. Appeals.

Section references. — This section is referenced in § 16-4404 and § 16-4405.

CASE NOTES

Motions and orders to compel arbitration.

Trial court's denial of shareholders' motion to compel arbitration, of claim brought by property owner who sought to pierce corporate veil of construction company in order to collect an underlying arbitration award, was a final and immediately appealable judgment, pursuant to Uniform Arbitration Act. Giron v. Dodds, 35 A.3d 433, 2012 D.C. App. LEXIS 2 (2012).

Property owner's claim seeking to pierce corporate veil of construction company in order to collect arbitration award from company's shareholders did not involve a dispute arising out of or relating to the underlying arbitrable breach of contract action, but instead arose out of owner's efforts to collect the arbitration award, and thus, trial court appropriately denied shareholders' motion to compel arbitra-

tion; after being awarded a money judgment, owner sought to hold company's shareholders individually liable for the arbitration award on the theory that those shareholders essentially looted the company. Giron v. Dodds, 35 A.3d 433, 2012 D.C. App. LEXIS 2 (2012).

When an attorney contested an order compelling arbitration, the order was final, for purposes of appeal, because such orders were final and appealable under both D.C. Code § 16-4427(a)(1) and D.C. Code tit. 11. Parker v. K&L Gates, LLP, 76 A.3d 859, 2013 D.C. App. LEXIS 619 (2013).

§ 16-4428. Uniformity of application and construction.

CASE NOTES

Applied in Wash. Teachers' Union v. D.C. Pub. Schs., 77 A.3d 441, 2013 D.C. App. LEXIS 665 (2013).

§ 16-4432. Savings clause.

CASE NOTES

Applied in Wash. Teachers' Union v. D.C. Pub. Schs., 77 A.3d 441, 2013 D.C. App. LEXIS 665 (2013).

CHAPTER 45. UNIFORM CHILD CUSTODY PROCEEDINGS.

§ 16-4501. Purposes of chapter. [Repealed].

LAW REVIEWS AND JOURNAL COMMENTARIES

The District Of Columbia's Joint Custody Presumption: Misplaced Blame And Simplistic Solutions, 46 Catholic University Law Review 767.

CHAPTER 46. UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT.

Subchapter I. General Provisions

Sec.
16-4601.02. Proceedings governed by other law.

Subchapter V. Miscellaneous Provisions

Sec.
16-4605.03. Transitional provision.

Subchapter I. General Provisions.

§ 16-4601.01. Definitions.

Section references. — This section is referenced in § 16-4604.05.

CASE NOTES

Home state.

Former wife was judicially estopped from asserting in District of Columbia Superior Court that Indiana court lacked jurisdiction to modify initial child-custody determination issued in District of Columbia divorce action, though the District's Superior Court had obtained exclusive, continuing jurisdiction over the determination under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), where former wife filed a motion in Indiana to modify former husband's non-custodial parenting time in which she alleged that Indiana was the home state, former husband responded by filing in Indiana a petition for modification of custody, both former wife and former husband spent a considerable amount of time litigating child custody in Indiana, and only after Indiana court issued a decision awarding former husband primary physical custody did former wife raise a jurisdictional issue under the UCCJEA. Kenda v. Pleskovic, 39 A.3d 1249, 2012 D.C. App. LEXIS 129 (2012).

§ 16-4601.02. Proceedings governed by other law.

This chapter does not govern a proceeding pertaining to:

(1) The authorization of emergency medical care for a child;

(2) An adoption proceeding pursuant to § 16-301; or

(3) A proceeding to adjudicate the parentage of a child pursuant to § 16-909(b-2).

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214; Mar. 19, 2013, D.C. Law 19-233, § 2(c), 59 DCR 14769.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-233 rewrote the section.

Legislative history of Law 19-233. — Law 19-233, the "Judicial Declaration of Parentage Amendment Act of 2011," was introduced in Council and assigned Bill No. 19-615. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 2, 2012, respectively. Signed by the Mayor on Nov. 20, 2012, it was assigned Act No. 19-550 and transmitted to Congress for its review. D.C. Law 19-233 became effective on Mar. 19, 2013.

Subchapter II. Jurisdiction.

§ 16-4602.01. Initial child-custody jurisdiction.

Section references. — This section is referenced in § 16-4602.02, § 16-4602.03, § 16-4602.04, § 16-4602.08, and § 16-4604.10.

CASE NOTES

Estoppel.

Former wife was judicially estopped from asserting in District of Columbia Superior Court that Indiana court lacked jurisdiction to modify initial child-custody determination issued in District of Columbia divorce action, though the District's Superior Court had obtained exclusive, continuing jurisdiction over the determination under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), where former wife filed a motion in Indiana to modify former husband's non-custodial parenting time in which she alleged that Indiana was the home state, former husband responded by filing in Indiana a petition for modification of custody, both former wife and former husband spent a considerable amount of time litigating child custody in Indiana, and only after Indiana court issued a decision awarding former husband primary physical custody did former wife raise a jurisdictional issue under the UCCJEA. Kenda v. Pleskovic, 39 A.3d 1249, 2012 D.C. App. LEXIS 129 (2012).

§ 16-4602.02. Exclusive, continuing jurisdiction.

Section references. — This section is referenced in § 16-4602.03.

CASE NOTES

Estoppel.

Former wife was judicially estopped from asserting in District of Columbia Superior Court that Indiana court lacked jurisdiction to modify initial child-custody determination issued in District of Columbia divorce action, though the District's Superior Court had obtained exclusive, continuing jurisdiction over the determination under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), where former wife filed a motion in Indiana to modify former husband's non-custodial parenting time in which she alleged that Indiana was the home state, former husband responded by filing in Indiana a petition for modification of custody, both former wife and former husband spent a considerable amount of time litigating child custody in Indiana, and only after Indiana court issued a decision awarding former husband primary physical custody did former wife raise a jurisdictional issue under the UCCJEA. Kenda v. Pleskovic, 39 A.3d 1249, 2012 D.C. App. LEXIS 129 (2012).

Subchapter III. Enforcement.

§ 16-4603.12. Costs, fees, and expenses.

Section references. — This section is referenced in § 16-4603.08 and § 16-4603.10.

CASE NOTES

Attorney fees.

Trial court did not abuse its discretion by denying former wife's request that former husband pay her attorney fees she incurred in child custody proceeding under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), where the fees sought by one of the law firms representing former wife were incurred after the parties agreed to share custody of their child, Indiana court in a related proceeding had awarded former husband attorney fees which former wife had not paid, and trial court found that the attorneys who contributed the most to the child's best interest were the guardians ad litem. Kenda v. Pleskovic, 39 A.3d 1249, 2012 D.C. App. LEXIS 129 (2012).

Subchapter V. Miscellaneous Provisions.

§ 16-4605.03. Transitional provision.

A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody determination which was commenced before April 27, 2001, is governed by the law in effect at the time the motion or other request was made.

(Apr. 27, 2001, D.C. Law 13-293, § 2(d), 48 DCR 2214; Mar. 31, 2009, D.C. Law 17-378, § 2(c), (e), 56 DCR 1572; Sept. 26, 2012, D.C. Law 19-171, § 75(c), 59 DCR 6190.)

Effect of amendments.

The 2012 amendment by D.C. Law 19-171 made a stylistic change.

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376

and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

CHAPTER 49. AUTHORIZATION FOR MEDICAL CONSENT FOR A MINOR BY AN ADULT CAREGIVER.

§ 16-4901. Authorization for medical consent for a minor by an adult caregiver.

LAW REVIEWS AND JOURNAL COMMENTARIES

The D.C. Medical Consent Law: Moving Towards Legal Recognition of Kinship Caregiving. Randi S. Mandelbaum and Susan L. Waysdorf, 2 D.C.L.Rev. 279, (1994).

CHAPTER 51. JURY SELECTION.

Sec.
16-5103. Penalties.

§ 16-5103. Penalties.

Any violation of § 16-1502 shall be a misdemeanor punishable by a fine of not more than the amount set forth in [§ 22-3571.01] or imprisonment of up to 180 days, or both.

(Mar. 14, 2007, D.C. Law 16-272, § 3(b), 54 DCR 856; June 11, 2013, D.C. Law 19-317, § 281(g), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in [§ 22-3571.01]" for "up to $500".

Emergency legislation. — For temporary (90 days) amendment of this section, see § 281(g) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 53. UNSWORN FOREIGN DECLARATIONS; UNIFORM ACT.

Sec.
16-5306. Form of unsworn declaration.

§ 16-5306. Form of unsworn declaration.

An unsworn declaration under this chapter shall be in substantially the following form:

"I declare under penalty of perjury under the law of the District of Columbia that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

"Executed on the _____ day of _____, _____, at
(date) (month) (year)
_____, _____ :
(city or other location, and state) (country):

_____
"(printed name)

_____
"(signature)."

(July 23, 2010, D.C. Law 18-191, § 2(b), 57 DCR 3400; Sept. 26, 2012, D.C. Law 19-171, § 75(d), 59 DCR 6190.)

Section references. — This section is referenced in § 22-2402.

Effect of amendments. — The 2012 amendment by D.C. Law 19-171 made stylistic changes.

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

CHAPTER 55. STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION.

Sec.
16-5501. Definitions.
16-5502. Special motion to dismiss.
16-5503. Special motion to quash.
16-5504. Fees and costs.
16-5505. Exemptions.

§ 16-5501. Definitions.

For the purposes of this chapter, the term:

(1) "Act in furtherance of the right of advocacy on issues of public interest" means:

(A) Any written or oral statement made:

(i) In connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; or

(ii) In a place open to the public or a public forum in connection with an issue of public interest; or

(B) Any other expression or expressive conduct that involves petition-

ing the government or communicating views to members of the public in connection with an issue of public interest.

(2) "Claim" includes any civil lawsuit, claim, complaint, cause of action, cross-claim, counterclaim, or other civil judicial pleading or filing requesting relief.

(3) "Issue of public interest" means an issue related to health or safety; environmental, economic, or community well-being; the District government; a public figure; or a good, product, or service in the market place. The term "issue of public interest" shall not be construed to include private interests, such as statements directed primarily toward protecting the speaker's commercial interests rather than toward commenting on or sharing information about a matter of public significance.

(4) "Personal identifying information" shall have the same meaning as provided in § 22-3227.01(3).

(Mar. 31, 2011, D.C. Law 18-351, § 2, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

Editor's notes. — Section 401 of D.C. Law 19-171 enacted this chapter into law.

CASE NOTES

Applicability.

Where a writer made comments about a public official from the Republic of Liberia, dismissal of the official's defamation suit was warranted because, inter alia, the District of Columbia Anti-Strategic Lawsuits Against Public Participation Act of 2010's special motion to dismiss provisions applied in federal proceedings where jurisdiction was based on diversity, certain privileges applied, the official qualified as a limited purpose public figure, and there was no indication that a statement characterizing the official as a "warlord" was false or made with actual malice. Boley v. Atl. Monthly Group, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 88494 (D.D.C. June 25, 2013).

Application of the District of Columbia's Anti-SLAPP Act, D.C. Code 16-5501 et seq., to a university professor's action for libel against the publisher of a magazine and a website and affiliated parties was appropriate because the case involved published commentary on the professor's research into issues of climate change, which was a topic of public interest. Mann v. Nat'l Review, Inc., — WLR —, 2013 D.C. Super. LEXIS 7 (July 19, 2013).

§ 16-5502. Special motion to dismiss.

(a) A party may file a special motion to dismiss any claim arising from an act in furtherance of the right of advocacy on issues of public interest within 45 days after service of the claim.

(b) If a party filing a special motion to dismiss under this section makes a prima facie showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the responding party demonstrates that the claim is likely to succeed on the merits, in which case the motion shall be denied.

(c)(1) Except as provided in paragraph (2) of this subsection, upon the filing

of a special motion to dismiss, discovery proceedings on the claim shall be stayed until the motion has been disposed of.

(2) When it appears likely that targeted discovery will enable the plaintiff to defeat the motion and that the discovery will not be unduly burdensome, the court may order that specified discovery be conducted. Such an order may be conditioned upon the plaintiff paying any expenses incurred by the defendant in responding to such discovery.

(d) The court shall hold an expedited hearing on the special motion to dismiss, and issue a ruling as soon as practicable after the hearing. If the special motion to dismiss is granted, dismissal shall be with prejudice.

(Mar. 31, 2011, D.C. Law 18-351, § 3, 58 DCR 741; Apr. 20, 2012, D.C. Law 19-120, § 201, 58 DCR 11235; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

Section references. — This section is referenced in § 16-5504.

Legislative history of Law 19-171. — See note to § 16-5501.

Editor's notes. — Section 401 of D.C. Law 19-171 enacted this chapter into law.

CASE NOTES

ANALYSIS

Construction with federal law.
Defamation.
Practice and procedure.
Time limitations.

Construction with federal law.

District of Columbia's anti-SLAPP (Strategic Lawsuit Against Public Participation) statute's special motion to dismiss procedure attempted to answer same question covered by federal rules governing motions to dismiss and for summary judgment, whether court could dismiss company's tort claims with prejudice on preliminary basis based on pleadings or on matters outside pleadings merely because company had not demonstrated that claim was likely to succeed on merits, so that District of Columbia law would be preempted to extent that it would not apply in federal court sitting in diversity, if federal rules were valid under Rules Enabling Act; although special motion to dismiss might raise arguments that were identical to motion to dismiss, District statute ultimately mandated dismissal with prejudice if plaintiff failed to demonstrate likelihood of success on merits, even where plaintiff raised genuine issue of material fact and even where dismissal without prejudice was appropriate. 3M Co. v. Boulter, 842 F.Supp.2d 85, 2012 U.S. Dist. LEXIS 12860 (2012), appeal dismissed by 2012 U.S. App. LEXIS 24828 (D.C. Cir. Oct. 19, 2012), amended by 2012 U.S. Dist. LEXIS 151231, 41 Media L. Rep. (BNA) 1752 (D.D.C. Oct. 22, 2012).

Defamation.

Where a writer made comments about a public official from the Republic of Liberia, dismissal of the official's defamation suit was warranted because, inter alia, the District of Columbia Anti-Strategic Lawsuits Against Public Participation Act of 2010's special motion to dismiss provisions applied in federal proceedings where jurisdiction was based on diversity, certain privileges applied, the official qualified as a limited purpose public figure, and there was no indication that a statement characterizing the official as a "warlord" was false or made with actual malice. Boley v. Atl. Monthly Group, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 88494 (D.D.C. June 25, 2013).

Practice and procedure.

University professor was entitled to proceed with a lawsuit against the publisher of a magazine and a website and affiliated parties because the District of Columbia's Anti-SLAPP Act, D.C. Code § 16-5501 et seq., did not bar the lawsuit as the professor presented a sufficient legal basis for the professor's defamation claims and the fair comment privilege was not available to the publisher and its affiliates. Mann v. Nat'l Review, Inc., — WLR —, 2013 D.C. Super. LEXIS 7 (July 19, 2013).

Time limitations.

It was unnecessary to decide whether the collateral order doctrine provided jurisdiction to review the denial of a motion to dismiss under the District of Columbia Anti-SLAPP Act of 2010, D.C. Code § 16-5501 et seq., because the merits of the appeal were a foregone con-

clusion. The motion was untimely, and the statutory time period could not be extended under Fed. R. Civ. P. 6(b). Sherrod v. Breitbart, 720 F.3d 932, 2013 U.S. App. LEXIS 12959 (D.C. Cir. 2013).

§ 16-5503. Special motion to quash.

(a) A person whose personal identifying information is sought, pursuant to a discovery order, request, or subpoena, in connection with a claim arising from an act in furtherance of the right of advocacy on issues of public interest may make a special motion to quash the discovery order, request, or subpoena.

(b) If a person bringing a special motion to quash under this section makes a prima facie showing that the underlying claim arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion shall be granted unless the party seeking his or her personal identifying information demonstrates that the underlying claim is likely to succeed on the merits, in which case the motion shall be denied.

(Mar. 31, 2011, D.C. Law 18-351, § 4, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

Section references. — This section is referenced in § 16-5504.

Legislative history of Law 19-171. — See note to § 16-5501.

Editor's notes. — Section 401 of D.C. Law 19-171 enacted this chapter into law.

§ 16-5504. Fees and costs.

(a) The court may award a moving party who prevails, in whole or in part, on a motion brought under § 16-5502 or § 16-5503 the costs of litigation, including reasonable attorney fees.

(b) The court may award reasonable attorney fees and costs to the responding party only if the court finds that a motion brought under § 16-5502 or § 16-5503 is frivolous or is solely intended to cause unnecessary delay.

(Mar. 31, 2011, D.C. Law 18-351, § 5, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

Legislative history of Law 19-171. — See note to § 16-5501.

Editor's notes. — Section 401 of D.C. Law 19-171 enacted this chapter into law.

§ 16-5505. Exemptions.

This chapter shall not apply to any claim for relief brought against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct from which the claim arises is:

(1) A representation of fact made for the purpose of promoting, securing, or completing sales or leases of, or commercial transactions in, the person's goods or services; and

(2) The intended audience is an actual or potential buyer or customer.

(Mar. 31, 2011, D.C. Law 18-351, § 6, 58 DCR 741; Sept. 26, 2012, D.C. Law 19-171, § 401, 59 DCR 6190.)

Legislative history of Law 19-171. — See note to § 16-5501.

Editor's notes. — Section 401 of D.C. Law 19-171 enacted this chapter into law.